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THE LAND ACQUISITION ACTS

WITH

NOTES AND RULES

BY

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Specific Relief Act, etc., etc.

SECOND EDITION

BY

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WITH SUPPLEMENT UP TO 1924.

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LAND ACQUISITION ACT, 1894.

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ACT NO. XXXVIII OF 1923.

ACT OF XXXVIII OF 1923.

[PASSED BY THE INDIAN LEGISLATURE.]

(Received the assent of the Governor General on the 5th August, 1923.)

An Act further to amend the Land Acquisition Act, 1894, for certain purposes.

Whereas it is expedient further to amend the Land Acquisition Act, 1894, for certain purposes hereinafter appearing; It is hereby enacted as follows:—

Short title and commencement.

1. (*1*) This Act may be called the Land Acquisition (Amendment) Act, 1923.

(*2*) It shall come into force on such date as the Governor General in Council may, by notification in the Gazette of India, appoint.

Amendment of section 4, Act I of 1894.

2. In sub-section (*1*) of section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as the said Act), after the word "locality", where it first occurs, the words "is needed or" shall be inserted.

Insertion of new section 5A in Act I of 1894.

3. After section 5 of the said Act the following heading and section shall be inserted, namely:—

"Objections."

Hearing of objections.

5A. (*1*) Any person interested in any land which has been notified under section 4, sub-section (*1*), as being needed or likely to be needed for a

public purpose or for a Company may, within thirty days after the issue of the notification, object to the acquisition of the land or of any land in the locality, as the case may be.

(2) Every objection under sub-section (1) shall be made to the Collector in writing, and the Collector shall give the objector an opportunity of being heard either in person or by pleader and shall, after hearing all such objections and after making such further inquiry, if any, as he thinks necessary, submit the case for the decision of the Local Government, together with the record of the proceedings held by him and a report containing his recommendations on the objections. The decision of the Local Government on the objections shall be final.

(3) For the purposes of this section, a person shall be deemed to be interested in land who would be entitled to claim an interest in compensation if the land were acquired under this Act."

Amendment of section 6, Act I of 1894

4. In sub-section (1) of section 6 of the said Act, for the words "whenever it appears to the Local Government" the following shall be substituted, namely :—

"when the Local Government is satisfied, after considering the report, if any, made under section 5A, sub-section (2)."

Amendment of section 11 Act I of 1894

5. In section 11 of the said Act, after the words "the value of the land," the words "at the date of the publication of the notification under section 4, sub-section (1)" shall be inserted.

Amendment of section 17 Act I of 1894

6. To section 17 of the said Act the following sub-section shall be added, namely :—

"(4) In the case of any land to which, in the opinion of the Local Government, the provisions of sub section (1) or sub-section (2) are applicable, the Local Government may direct that the provisions of

section 5A shall not apply, and, if it does so direct, a declaration may be made under section 6 in respect of the land at any time after the publication of the notification under section 4, sub-section (*1*)."

7. In clause *first* of sub-section (*1*) of section 23 of the said Act, for the words "declaration relating thereto under section 6;" the words "notification under section 4, sub-section (*1*)," shall be substituted. Amendment of section 23 Act I of 1894

8. In clause *seventhly* of section 24 of the said Act, for the words "declaration under section 6" the words "notification under section 4, sub-section (*1*)," shall be substituted. Amendment of section 24 Act I of 1894

9. In sub-section (*1*) of section 40 of the said Act, after the word "satisfied," the words "either on the report of the Collector under section 5A, sub-section (*2*), or" shall be inserted. Amendment of section 40 Act I of 1894

10. In section 41 of the said Act,— Amendment of section 41 Act I of 1894

(*a*) the words "Such officer shall report to the Local Government the result of the inquiry, and," shall be omitted; and

(*b*) after the word "satisfied" the following words shall be inserted, namely:—

"after considering the report, if any, of the Collector under section 5A, sub-section (*2*), or on the report of the officer making an inquiry under section 40."

AMENDMENTS IN THE LAW ACQUISITION ACT, MADE BY THE DEVOLUTION ACT OF 1920 (XXXVIII OF 1920).

In sub-sec. (*1*) of sec. 38 and in sec. 41 the words "subject to such rules as the Governor General of India in Council may from time to time prescribe in behalf" shall be omitted.

In sub-sec. (*1*) of sec. 55, the words "subject to the control of the Governor General in Council" shall be omitted ;

And to the same sub-section the following proviso shall be added, namely :—

"provided that where the provisions of this Act are put in force for the acquisition of land—

(*a*) for the purposes of any railway, or

(*b*) for such other purposes, connected with the administration of a central subject as defined in sec. 45A, of the Government of India Act, as the Governor General in Council may, by notification in the Gazette of India, declare in this behalf,

the power to make, alter and add to rules conferred on the Local Government by this sub-section shall be exercised subject to the control of the Governor General in Council."

ADDENDA

Sec. 6

The language of this section is perfectly plain and clearly bars the Court from enquiring into the question whether the purpose for which land in respect of which a declaration has been issued is public purpose or not ; *Secretary of State* v. *Akber Ali,* 45 All. 443=21 A.L.J. 338=L.R. 4 A. 193=74 I.C. 8=1923 All. 523 (2).

The effect of a declaration under sec. 6 (3) is only to make it conclusive that the land is required for a public purpose. It does not debar a court from enquiring into the validity of the steps leading to that declaration, *In re Manick Chand* v. *Cal. Improv. Trust,* 48 Cal. 916=66 I.C. 600.

A declaration may be issued for a quantity of land consisting of several holdings belonging to different owners, *R. C. Sen* v. *Trustee for the Improvement of Calcutta,* 33 C. L. J. 509.

Sec. 9

The effect of service of notice under this section is that the person on whom such service is effected is restricted to the provisions of this Act, so that if he is dissatisfied with an award, he is compelled to pursue his remedies by means of a reference under sec. 18 and is debarred from maintaining a civil suit for the purpose of vindicating his rights, *Saibesh Chandra Sarkar* v. *Bejoy Chand Mahatap,* 26 C.W.N. 506=65 I.C. 711=1922 Cal. 4.

The L.A. Act refers only to one notice, one proceeding and one award to be given and made regarding one holding and one ownership, *R. C. Sen* v. *Trustee for the Improvement of Calcutta,* 48 Cal. 892=33 C.L.J. 509=64 I.C. 577.

Although a notice under this section is imperative, non-service of the notice is not fatal to the same, *Kasturi Pillai* v. *Municipal Council, Erode,* 43 Mad. 280=37 M.L.J. 618 ; *Burn & Co., Ltd.* v. *Secretary of State,* 1923 Cal., 513.

When the notice under this section required a party to file his claim on a specified day and he filed it on the following day, the Court held that it was sufficient compliance with the notice ; at any rate there was sufficient reason for allowing him to come in under sec. 25 (3) of the Act and therefore his application for a reference could not be refused, *Gyanendra Nath Paul* v. *Secretary of State,* 25 C. W. N. 71=61 I.C. 532.

The mere fact that one of three brothers accepts a notice under this section on behalf of one or other of the others, does not raise a presumption that he had any authority to do so, *Nitai Dutt* v. *Secretary of State,* 3 Pat. 304.

Sec. 12

An award made by a Collector becomes final and binding only when it is filed under this section. The mere signing of the award by the Collector does not make it conclusive. Before filing an award it is open to the Collector to substitute another in the place of one already made, *Kooverbai Sorabji Manekji* v. *Assistant Collecor, Surat,* 22 Bom. L.R. 1136=59 I.C. 429 Read also *Padamsi Narayan* v. *Collector of Thana,* 46 Bom. 366=23 Bom. L.R. 779=1922 Bom. 161=64 I.C. 103.

Sec. 18

A reference under this section can only be made by a written application to the collector requiring that the matter be referred for the determination of the Court. Where no such demand is made, but simply an application is made setting forth the grounds of objection to the award and a prayer that

either the property be released or proper compensation be awarded, the Court held that it was not an application for reference, *Samuel Burge* v. *Improvement Trust, Lucknow,* 26 O.C. 324=73 I.C. 127. The conditions prescribed by this section are the conditions to which the power of the collector to make the reference is subject and those conditions must be fulfilled before the Court can have jurisdiction to entertain the reference, *Ibid.* The procedure regarding production of documents etc., should be followed in a case after reference, *Abdul Alim* v. *Badaruddin,* 28 C.W.N. 295. *Cf. Manmathanath Mallick* v. *Secretary of State,* 28 C.W.N. 461 P.C.

It is open to the Court in a proceeding under this Act to consider and determine any question of title to the land acquired or any question of apportionment of compensation as between the claimant and the Government, *Mangal Das* v. *Asst. Collector, Ahmedabad,* 45 Bom. 277=23 Bom. L.R. 148=64 I.C. 584. See also *Ramchandra Rao* v. *Ramchandra Rao,* 45 Mad. 320=43 M.L.J. 78=35 C.L.J. 545=26 C.W.N. 713=67 I.C. 408=49 I.A. 129 (P.C.)

A sub-tenant who was given a right to construct a pucca building on the land, whose interest is not transferable except with the sanction of his superior landlord, has in interest which entitles him to be heard upon the question of adequacy of compensation awarded by the Collector under the Land Acquisition Act, *Jagadiswar* v. *Collector of Goalpara,* 39 C.L.J. 574.

If the entire amount of the compensation money is paid to the mortgagor, the mortgagee can ask for a reference under this section within the time allowed by law, *Secretary of State* v. *Kuppusami Cheth,* 78 I.C. 82.

A claim was filed beyond the date fixed in the notice; but no objection on that score was taken

before the District Judge, but objection was taken on appeal. *Held* that as the point had not been raised in the Court below, and consequently there were not sufficient materials on the record to determine whether there were any sufficient reasons for the delay, the appellate court could not go into the question.

Lachman Prasad v. *Secretary of State*, 43 All. 652=19 A.L.J. 672=63 I.C. 682.

When an objection has been taken under one of the headings mentioned in this section, and a reference made in consequence, it is not open to the claimant to attack the award upon objection falling under some other heading, *Promothanath* v. *Secretary of State*, 40 C.L.J. 105. But new objections belonging to the same category can however be gone into, *Ibid.*

When the landlord is satisfied with an award and a reference is made only at the instance of a tenant, and if the reference is successful and the award is enhanced, the landlord cannot claim benefit of it, *Maharaja Sasi Kanta* v. *Abdur Rahman*, 38 C.L.J. 265=75 I.C. 203=1923 Cal. 158.

A question of title arising between the Government and another claimant cannot be settled by the District Judge in a reference under this section, *Mahomed Wajeeh* v. *Secretary of State*, 24 O. C. 197=8 O. L. J. 426=64 I. C. 93. For the scope of a reference and the bifurcated nature of proceedings in valuation and apportionment, see *Ramchandra Rao* v. *Ramchandra Rao*, 45 Mad. 420=26 C.W.N. 713 =43 M.L.J. 78=49 I.A. 129=67 I.C. 408 (P.C.) As to the procedure to be adopted where the same controversy is the subject matter of a civil suit and of a land acquisition case coming before the Court by virtue of reference under sec. 18, see *Sashi Mukhi* v. *Keshablal*, 27 C.W.N. 809.

An order refusing to make reference under this

section is not open to revision by High Court, under sec. 115 C. P. Code, *Balkrishna Daji* v. *Collector, Bombay,* 47 Bom. 699=25 Bom. L. R. 398=73 I.C. 354=1923, Bom. 290. The High Court has no power to revise the order of a Collector refusing to make a reference to the Court, *Abdul Sattar* v. *Special Deputy Collector,* 47 Mad. 357=46 M.L.J. 209 F.B.

Sec. 20

Under this section the Secretary of State is only interested in the amount of compensation which the Collector or the Court on reference by the Collector awards. He is not interested as a party in the distribution or apportionment of the compensation. So if in an apportionment appeal if the rival claimant is not impleaded as a party respondent, the Court cannot award him any relief, *Sanwal Das* v. *Secretary of State,* 20 A.L.J. 604=L.R. 3 A. 389=1922 All. 438.

Sec. 23

The owner of the land acquired under this Act is entitled to the value, obtainable *in open market* for the land, if put to its most lucrative use, *Thareesamma* v. *Deputy Collector, Cochin,* 45 M.L.J. 339= (1923) M.W.N. 682=18 L.W. 356=33 M.L.T. 48.

The expression "market value" means the value which a parcel of land would realise if sold in the market. The seller must be a willing seller ; a forced sale affords no criterion of market value. The purchaser must be prudent purchaser, i.e. one who makes his offer after making necessary enquiries as to the value of the land, *Government of Bombay* v. *Merwan Moondigar,* 48 Bom. 190=25 Bom. L. R. 1182 ; see also *Manmatha Nath Mallick,* 28 C.W.N. 461 P. C.

The fairest and most favourable principle of compensation to the owners is to estimate the market value of the property, not according to its present

disposition, but laid out in the most lucrative and advantageous way in which the owners could dispose of it, *Mohini Mohan Banerji* v. *Secretary of State*, 25 C.W.N. 1002=34 C.L.J. 188=67 I.C. 25 ; *Thareesamma* v. *Deputy Collector, Cochin*, 45 M.L.J. 339=(1923) M.W.N. 682=18 L.W. 356=33 M.L.T. 48.

Where a land has been recently purchased, the purchase money would be the best index of its market value. But the purchase can show that since his purchase there has been an all round general increase in the price of lands. On the other hand the Government can show that the purchaser has paid a fancy price on a mistaken idea as to the future possibilities of the land in question, *Frenchman* v. *Asst. Collector, Havelli*, 24 Bom. L.R. 782=1922 Bom. 399=68 I.C. 521. But the mere fact that it was purchased by a speculator in land with the object of reselling it at a profit is no ground for disregarding the sale for assessing the compensation, *Government of Bombay* v *Merwar Moondigar*, 25 Bom. L. R. 1182.

The market value of a plot of land is to be determined as a whole, having regard to the sales in the vicinity, *Government of Bombay* v. *Merwar Moondigar*, 25 Bom. L.R. 1182 cf. *Rathnamasari* v. *Secretary of State*, 44 M.L.J. 132 (below).

The price of the land proposed to be acquired must be fixed in reference to the *probable use* which would give the owner the best return and not merely in accordance with its present use, *Hardwari* v. *Secretary of State*, 64 I.C. 146. The special *adaptability* of the land acquired cannot be altogether ignored in the determination of its market value, *Baroda Prasad Dey* v. *Secretary of State*, 49 Cal. 83 =25 C.W.N. 677=1923 Cal. 386=66 I.C. 846. In assessing compensation the court should take into account not only the present purpose to which the

land is adapted but also any other beneficial purpose to which in the course of events it might within a reasonable period be applied. Adaptability for possible use in a particular way must always be taken into consideration, *Mohini Mohan Banerji* v. *Secretary of State,* 25 C.W.N. 1002=34 C.L.J. 188=67 I.C. 25. Where land is acquired for quarrying purpose, the special *adaptability* of the land for quarrying is an element for consideration for fixing the amount of compensation, *Raghunatha Rao* v. *Secretary of State,* 39 M. L. J. 623=(1920) M.W.N. 759 =13 L.W. 11=60 I.C. 187. But in a Bombay case it has been held that the mere fact that there is stone underneath the land sought to be acquired does not mean that the land should be valued on a quarrying basis whether it would pay a purchaser to extract it would be purely problematical, *Government of Bombay* v. *N. H. Moos,* 47 Bom. 218=24 Bom. L.R. 471=1922 Bom. 254. The special adaptability for building purposes can be taken into consideration, where in the case of lands which are at the time of the acquisition agricultural in disposition, *Thareesamma* v. *Deputy Collector, Cochin,* 45 M.L.J. 339 =(1923) M.W.N. 682=18 L.W. 356=33 M.L.T. 48.

In calculating the value of a plot of land the price previously paid for a portion of the same area affords infinitely the best material which can possibly exist if the prices remain stationery, *Rai Bahadur Lala Narasingh* v. *Secretary of State,* (1922) Lah. 327=70 I.C. 573. Where property consisting of a building surrounded by 8½ acres of garden land had been let as a whole block for several years before the date of its acquisition, and the Court awarded twenty times the net annual rental deducting Municipal taxes, revenue charges and costs of repairs as compensation, *held* the amount awarded was reasonable and that it was not proper to value the land

and building separately as independent items and award the aggregate value as compensation, *Rathnamasari* v. *Secretary of State*, 44 M.L.J. 132=17 L.W. 415=1923 Mad. 332=72 I.C. 214. Read also *Kathissabi* v. *Revenue Divisional Officer, Calicut*, (1923) M.W.N. 54=1923 Mad. 31=16 L.W. 891=31 M.L.T. 409 (H.C.)=70 I.C. 82.

In a growing town like Cawnpore where the value of the land is increasing rapidly, a basis of 16⅔ years' purchase for calculating the value of land was held to be too low, and the value was calculated at 20 years' purchase of the annual rent derived from the land, *Lachman Prosad* v. *Secretary of State*, 43 All. 652=19 A.L.J. 672=63 I.C. 682.

When a building and its appurtenant land cannot be valued separately and no attempt has been made to do so in the land acquisition proceedings, the market value must be determined on the net rental value and when that is done the building cannot be separated from the land, for it is impossible to say what proportion of the rent is fixed on the building to that on the land. The question as to what should be deducted for repairs in calculating the net rental is one of fact, *Kathissabi* v. *Revenue Divisional Officer, Calicut*, (1923) M.W.N. 54=16 L.W. 891=31 M.L.T. 409=1923 Mad. 31=70 I.C. 82.

The opinion of an expert is of little consequence in determining the market value, if the expert gives no data in support of his opinion, *Secretary of State* v. *Sarala Devi*, 5 Lah. 227.

In this country bamboos fall within the definition of timber inasmuch as they are used as building materials in the construction of houses, *Rameshwar Singh* v. *Basudev Singh*, 6 Pat. L.J. 127=3 Pat. L.T. 90=60 I.C. 521=1923 P. 95.

Simply because there is a public right of way

over a portion of the acquired land, it cannot be said that the claimant is entitled to no compensation at all for his rights as a proprietor, *Gajanan Vinayak* v. *Asst. Collector of Salsettee*, 25 Bom. L.R. 480=1924 Bom. 54.

For the basis of assessment of compensation for toka lands on a lease of 50 years, see *Government of Bombay* v. *Khanderao*, 25 Bom. L.R. 794=1923 Bom. 417. For the effect of a private contract on the valuation of compensation see *Fort Press Co.* v. *Municipal Corporation of Bombay*, 44 Bom. 797=36 C.L.J. 539=27 C.W.N. 418=43 M.L.J. 419=24 Bom. L.R. 1228=68 I.C. 980 P.C.

It is competent to a Land Acquisition Judge to direct a portion of the compensation money to be paid towards the cost of the proceedings by which the money came to be awarded to an administratix having a limited power of alienation, *Lalit Mohan Dey* v. *H. N. Dutt & Co.*, 65 I.C. 209.

A court has no power to reduce the amount of compensation awarded by the Collector even though there was a mistake in his calculation, *Kathissali* v. *Revenue Divisional Officer, Calicut*, 16 L.W. 891=31 M.L.T. 409 (H.C.)=(1923) M.W.N. 54=1923 Mad. 31=70 I.C. 82.

Sec. 24

No one is entitled to claim compensation on the ground that his land is injuriously affected unless he can establish a statutory right, *Sisters Charity of Rockingham* v. *King*, 32 M.L.T. (P.C.) 62. A person is not entitled to any enhanced value by reason of the declaration of intention on the part of the Improvement Trust to keep the adjoining land as an open space, *Manmatha Mallick* v. *Secretary of State*, 28 C.W.N. 461 (P.C.)

Sec. 25

Where a Collector makes an award, which by

reason of his error, includes a sum which the party is not entitled to, and the same is confirmed by the Court, the Collector cannot then turn round and apply to the Court for amending the award by reducing the sum wrongly included, *Chandulal* v. *Collector of Bareilly,* 44 All. 86=19 A.L.J. 871=1922 All. 203=64 I.C. 624.

The word "applicant" in this section is used to describe the person who puts in a written application under sec. 18 for having his objection to the award referred for decision to a Civil Court. He is not necessarily identical with the person who makes a claim after notice under sec. 9. It is sufficient if such person is a "person interested" within the meaning of sec. 3, who should not have accepted the award, *Gattineni* v. *Deputy Collector of Tenali,* 45 Mad. 421=42 M.L.J. 298=(1922) M.W.N. 188=15 L.W. 366=1922 Mad. 100=67 I.C. 146.

Where the correspondence showed that the applicant company were fighting out the question of re-measurement ; and were under the impression that the question of valuation would be taken after the question of measurement was finished and had no idea that the very next day after the measurement was completed in their presence, the Collector would make his award without any previous notice to them ; *held* there was sufficient reason for the applicant within this section for the omission to prefer claims before the Collector, *Burn & Co.* v. *Secretary of State,* 1923 Cal. 513.

Sec. 30

Compensation for Bhati lands may be apportioned between the occupants and the khot in the proportion of two to one, *Vallabhdas* v. *Special Land Acquisition Officer,* 46 Bom. 272=23 Bom: L.R. 1288 ; vide in this connection, *Gajanan Vinayak* v. *Asst.*

Collector of Salsette, 25 Bom. L.R. 480=1924 Bom. 54.

Sec. 31

The proviso to sub-sec. (2) of this section applies only where the person was under a disability or was not served with notice of the proceedings, *Saibesh Chandra Sarkar* v. *Bejoy Chand,* 26 C.W.N. 506=1922 Cal. 4=65 I.C. 711.

Sec. 32

A Land Acquisition Court has no power to order refund of money paid out to a claimant, *Gohar Sultan* v. *Ali Muhammad,* 3 Lah. L.J. 421=62 I.C. 1.

Sec. 52

This section does not apply to proceedings commenced by an owner of property to restrain the Calcutta Corporation and Improvement Trust from taking further steps in some pending land acquisition proceedings, *In re Manik Chand* v. *Corporation of Calcutta,* 48 Cal. 916=66 I.C. 600.

Sec. 54

An order directing refund of money taken by a party out of Court is not an award, and therefore not appealable under sec. 54. Such an order can however be set aside in revision, *Gohar Sultan* v. *Ali Muhammad,* 3 Lah. L.J. 421=63 I.C. 1.

Where the compensation money is claimed by rival claimants, and the Court adjudicates upon their conflicting rights, the decision of the Court will be a decree and is appealable to the High Court and the Privy Council, *Ram Chandra Rao* v. *Ram Chandra Rao,* 45 Mad. 320=43 M.L.J. 78=24 Bom. L.R. 693=16 L.W. 1=(1922) M.W.N. 359=26 C.W.N. 713=35 C.L.J. 545=20 A.L.J. 684=30 M.L.T. 154 =(1922) P.C. 80=L.R. 3 (P.C.) 158=49 I.A. 129 =67 I.C. 408 (P.C.)

An order by the District Judge rejecting an

application for revision of the Collector's award results in the award being confirmed, and therefore, the order is appealable under this section, *Nitai Dutt* v. *Secretary of State,* 3 Pat. 304.

This section does not affect the right of appeal from the judgment of a single Judge of the High Court to Division Bench under cl. 10 of the Letters Patent, *Har Dial Shah* v. *Secretary of State,* 3 Lah. 420=1923 Lah. 275=69 I.C. 428.

THE

LAND ACQUISITION ACT

(ACT No. I OF 1894.)[1]

PASSED BY THE GOVERNOR-GENERAL OF INDIA IN COUNCIL.

(Received the assent of the Governor-General on the 2nd February, 1894.)

An Act to amend the law for the acquisition of land for public purposes and for Companies.

Pre-amble.

WHEREAS it is expedient to amend the law for the acquisition of land needed for public purposes and for Companies, and for determining the amount of compensation to be made on account of such acquisition; it is hereby enacted as follows:—

NOTES.

Scope and object: The scope and object of the Act is to provide a speedy method for deciding the amount of the compensation payable by the Collector, *Imdad Ali* v. *Collector* of *Farakhabad*, 7 All., 817 (819). The Act authorises the Government to make compulsory acquisition and prescribes the mode for determining the amount of compensation. The owner of the land cannot take objection to the acquisition

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1 For Statement of Objects and Reasons, *see* Gazette of India, 1892, Pt. V, p. 32; for report of the Select Committee, *see ibid*, 1894, Pt. V, p. 23; and for Proceedings in Council, *see ibid*, 1892, p. 25, and *ibid*, 1894, pp. 19, 24 to 42.

itself, his wishes in that respect are wholly irrelevant *Ezra* v. *Secretary of State*, 30 Cal., 36 (74). See also 12 Bom. L. R. 34(51) and Beng. L. A. Manual, 1917, p. 47. A review of the principal provisions of the Act establishes three things: (a) A right in the Government to acquire land, (b) a right in the owner to receive compensation, (c) a summary determination of area and value of land by the Collector and a judicial determination of all controversies by the L. A. Court, *Bhandi Singh* v. *Ramadhin*, 10 C. W. N. 991 (995), s. c. 2 C. L. J. 359.

It should be noticed that the Act creates statutory rights of an exceptional character; therefore the conditions prescribed herein should be strictly complied with; mere nominal compliance will not do, and the Courts have always necessary powers to afford relief to parties aggrieved by violation of the provisions of the Act, *Raghunath Das* v. *Collector of Dacca*, 11 C. L. J., 612=6 I. C. 457.

The taking of a railway on a level across a public high way is not an acquisition of immoveable property within the meaning of the Land Acquisition Act, *Municipal Corporation* v. *Great Indian Peninsula Ry. Co*, 21 C. W. N. 441 (P. C.); 25 C. L. J. 209; 21 M.L. T. 1: 19 Bom. L.R. 48: 15 A. L. J. 63: (1917) M. W. N. 88: 38 I. C. 923.

PART I.

PRELIMINARY.

Short title, extent and commencement

1. (1) This Act may be called the Land Acquisition Act, 1894.

(2) It extends to the whole of British India; and

(3) It shall come into force on the first day of March, 1894.

NOTES.

For the definition of the words "British India," see section 3 (7) of the General Clauses Act (X of 1897).

The Act has been declared in force in—

(1) Upper Burma (except the Shan States) by the Burma Laws Act, 1898 (XIII of 1898), s. 4, Burma Code, Ed. 1899;

(2) Sonthal Parganas by the Sonthal Parganas Settlement Regulation, 1872 (III of 1872), s. 3—see the revised edition as modified up to 1st October, 1899;

(3) Angul District by notification under s. 5 of the Angul District Regulation. 1894 (I of 1894)—*see* Calcutta Gazette, 1901, Pt. I. p. 1534.

The Act has also been declared by notification under the Scheduled Districts Act, 1874 (XIV of 1874), to be in force in (1) the Districts of Hazaribagh, Lohardaga (now called the Ranchi District—*see* Calcutta Gazette, 1899, Pt. 1, p. 44) and Manbhum, and in Pargana Dhalbhum and the Kolhan in the District of Singhbhum—*see* Gazette of India, 1894, Pt. I. p. 400; and (2) the District of Palamau, *see* Gazette of India, 1894, Pt. I. p. 639.

It has been extended, by notification under s. 5 of the same Act, to British Baluchistan—*see* Baluchistan Code, Ed. 1900, p. 114.

Rule of Construction :—In construing an Act, the proper course is in the first instance to examine the language of the statute and to ask what its natural meaning is, uninfluenced by any considerations derived from the previous state of the law and not to start with enquiring how the law previously stood; *see Vagliano* v. *Bank of England*, L. R. (1891) A. C. 120 at p. 144, also *Norendra Nath Sircar* v. *Kamalbasini*, 23 I. A. 26, s. c. 23 Cal., 563, 571. The interpreter's attempt should always be directed to the ascertainment of not what has been intended but what has been said, and for this purpose the general scope of the legislation may be examined when a particular matter is open to diverse construction, *Brophy* v. *Attorney General of Manitoba*, L. R. (1895) A. C. p. 216.

The strict rule of construction has no application to the L. A. Act, because it involves a promotion of important public interests to which private interests ought to be subordinated, *Daryadinomal* v. *Secretary of State*, 2 Sind L. R. 68. In this view the Act is of an exceptional character and in construing it the real intention of the Legislature may be taken into consideration, *Balvant Ramchandra* v. *Secretary of State*, 29 Bom., 489-505, s. c. 7 Bom. L. R. 499(518). But see *Ram Saran Das* v. *Collector of Lahore*, 9 I. C. 228-9 P. W. R. 1911, where it has been held that the Act should be expounded liberally in favour of the public and strictly against the Government. Cf. *East and West India Docks Co.* v. *Gattke*, 3 M. and G. 155 : 20 L. J. Ch. 217.

When statutory rights of an exceptional character have been created, the conditions prescribed by the statute for the exercise of such rights must be strictly fulfilled, and if an attempt is made at merely nominal compliance with the provisions of the statute in the exercise of such rights, the Court can afford relief to a person who is aggrieved by the adoption of such a course; *Roghu Nath Das* v. *Collector of Dacca*, 11 C. L. J. 612. 6 P.C. 457 Cf. also *Nusserwanjee Pestonjee* v. *Meer Mynoodeen*, 6 M. I. A. 155.

Repeal.

2. (1) *Repealed by Act X of 1914 (Second Schedule.)*

(2) All proceedings commenced, officers appointed or authorised, agreements published and rules made under the Land Acquisition Act, 1870[1] shall, as far as may be, be deemed to have been respectively commenced, appointed or authorised, published and made under this Act.

(3) Any enactment or document referring to the Land Acquisition Act, 1870[1] or to any enactment thereby repealed shall, so far as may be, be construed to refer to this Act or to the corresponding portion thereof.

NOTES.

The first general law in British India for acquisition of land for public purposes was Act VI of 1857, which was repealed by Act X of 1870. The present Act 1 of 1894 has repealed Act X of 1870, and has brought about several important changes in the provisions of the old Act. One of the most important changes, is the abolition of assessors. Before Act VI of 1857, the first law for acquisition of land in Bengal was Reg. I of 1824, the provisions of which were subsequently extended to the town of Calcutta. In Bombay, Act XVIII of 1839 was the law for acquisition of land; and in Madras Act XX of 1852 was the law. All those Acts were repealed by Act VI of 1857.

Clause 2.—A reference was made by the Collector under s. 15 of Act X of 1870, to the Court for apportionment of the compensation money amountig to less than Rs 5, 000 and whilst the case was pending before him, Act X of 1870 was repealed by act I of 1894. *Held*, that though the proceedings in the case were commenced under the old Act but by virtue of sec 2 *(2)* of Act I of 1894, they must be deemed to be proceedings under the latter Act; and under sec. 54 of the Act, appeal would lie to the High Court and not to the District Court ; *Balaram Bramaratar Roy v. Sham Sunder*, 23 Cal., 526 : Followed in *Nobin Chunder v. Deputy Commiss'oner of Sylhet*, 1 C. W. N. 562. Also Cf. *Va Syed Sevai v. Tashildar of Periakulam*, 6 M. L. J. 122.

1. Amended by Act X of 1914 (First Schedule).

An award of compensation was made under Act X of 1870. The Collector subsequently desired to withdraw the proceedings in the matter, but the District Judge held that the proceedings could not be withdrawn after a reference had been made, and he ordered the Collector to pay the amount awarded with costs and interests. The claimant after the passing of Act I of 1894 applied to enforce the payment ordered by the award, *Held*, that Act X of 1870 prescribed no mode of compelling payment by the Collector of compensation awarded under its provisions, but left the persons interested to a suit to enforce such payment. The proceedings under that Act were, therefore, at an end when the award was made. That being so, there were no proceedings pending in the case when the new Act I of 1894 came into the force. Clause 2 of sec. 2 of that Act therefore, did not apply and no further steps could be taken under that Act; *Nilkanth* v. *Collector of Thana*, 22 Bom., 802, F. B.

Officers appointed or authorised, agreements published and rules made under the Land Acquisition Act of 1870, shall be deemed to have been appointed, or authorised, published and made under this Act.

Clause 3.—The following Acts in which reference is made to the Land Acquisition Act of 1870, shall be construed to refer to this Act :— Indian Telegraph Act XIII of 1885; Land Acquisition (Mines) Act, XVIII of 1885, s. 17; Tramways Act XI of 1886, s. 7; Indian Railways Act IX of 1890, s. 7; The Bengal Embankment Act, VI of 1873 B. C., s. 29; The Bengal Irrigation Act, III of 1876 B. C,, s. 52; Bengal Drainage Act VI of 1880 B. C., ss. 21-23; The Bengal Embankment Act II of 1882, ss. 36-41; The Calcutta Municipal Act II of 1899, s. 557.

Definitions.

3. In this Act, unless there is something repugnant in the subject or context,—

(*a*) the expression "land" includes benefits to arise out of land, and things attached to the earth or permanently fastened to anything attached to the earth:

(*b*) the expression "person interested" includes all persons claiming an interest in compensation to be made on account of the acquisition of land under this Act; and a person shall be deemed to be interested in land if he is interested in an easement affecting the land :

(c) the expression "Collector" means the Collector of a district, and includes a Deputy Commissioner and any officer specially appointed by[1] the Local Government to perform the functions of a Collector under this Act:

(d) the expression "Court" means a principal Civil Court of original jurisdiction, unless the Local Government has appointed[2] (as it is hereby empowered to do) a special judicial officer within any specified local limits to perform the functions of the Court under this Act:

(e) the expression "Company" means a Company registered under the Indian Companies Act,[3] 1882, or under the (English) Companies Acts, 1862 to 1890 or incorporated by an Act of Parliament or of the Governor-General in Council or by Royal Charter or Letters Patent; [and includes a society registered under the Societies Registration Act, 1860, and a registered society within the meaning of the Co operative Societies Act, 1912.][4]

(f) the expression "public purpose" includes the provision of village-sites in districts

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1 For officers specially appointed under clause (c) in—

(1) Ajmer-Merwara, *see* Gazette of India, 1902, Pt. II, p. 1081.

(2) Bombay, *see* Bombay, List of Local Rules and Orders, Vol. I, Ed. 1896, p. cxlv,

2 For instance of such an appointment, *see* Madras List of Local Rules and Orders, Vol. I, Ed. 1898, p. 251; and Bombay List of Local Rules and Orders, Vol. I, Ed. 1896, p. cxlv.

3 General Acts, Vol. IV, p. 100.

4 Amended by the Land Acquisition (Amendment) Act, (Act No. XVII of 1919).

in which the Local Government[1] shall have declared by notification in the official Gazette that it is customary for the Government to make such Provision : and

(*g*), the following persons shall be deemed persons "entitled to act" as, and to the extent hereinafter provided, (that is to say),—

trustees for other persons beneficially interested shall be deemed the persons entitled to act with reference to any such case, and that to the same extent as the persons beneficially interested could have acted if free from disability;

a married woman, in cases to which the English law is applicable, shall be deemed the person so entitled to act, and, whether of full age or not, to the same extent as if she were unmarried and of full age; and

the guardians of minors and the committees or managers of lunatics or idiots shall be deemed respectively the persons so entitled to act, to the same extent as the minors, lunatics or idiots themselves, if free from disability, could have acted :

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1 For instances of such notifications, *see* Burma Laws List, Ed. 1897, p. 314; *see* also Burma Gazette, 1899, Pt I, p. 297, and Bombay authorized Addenda List, p. cxlv

Provided that—

(*i*) no person shall be deemed "entitled to act" whose interest in the subject-matter shall be shown to the satisfaction of the Collector or Court to be adverse to the interest of the person interested for whom he would otherwise be entitled to act;

(*ii*) in every such case the person interested may appear by a next friend, or, in default of his appearance by a next friend, the Collector or Court, as the case may be, shall appoint a guardian for the case to act on his behalf in the conduct thereof;

(*iii*) the provisions of Chapter XXXI of the Code of Civil Procedure shall, *mutatis mutandis*, apply in the case of persons interested appearing before a Collector or Court by a next friend, or by a guardian for the case, in proceedings under this Act; and

(*iv*) no person "entitled to act" shall be competent to receive the compensation-money payable to the person for whom he is entitled to act, unless he would have been competent to alienate the land and receive and give a good discharge for the purchase-money on a voluntary sale.

NOTES.

Clause (a) Land :—The definition of the word "land" as given here is almost similar to the definition of "immoveable property" given in the General Clauses Act X of 1897, s. 3, (25). See also Sec. 3 of the Indian Registration Act (III of 1877). Cf. Sec. 3 of the T. P. Act. Land,

1 *See* O. xxxii of the C. P. Code, 1908.

includes trees, buildings and standing crops thereon, see s. 19 (1). *Sub-Collector* of *Godavari* v. *Seragam*, 30 Mad., 151, s. c. 16 M. L. J. 551. It includes everything from the heaven on the one side to the centre of the earth on the other, *In re Metropolitan District Railway & Co.*, L. R. 13 Ch. D. 620. The word "includes" shows that the Legislature intended to lump together in one single expression "land" several things or particulars such as soil, the buildings on it, any charges on it, and other interests in it, all which have a separate existence and are capable of being dealt with either in a mass or separately as the exigencies of each case arising under the Act may require, *Government of Bombay* v. *Esufali Salebhai*, 34 Bom., 618 : 12 Bom. L. R. 34 : 5 I. C. 621. The term "land" as used in Sec. 557 of the Calcutta Municipal Act (Beng. Act II of 1899), includes *bustee*, and is not restricted in its application to building land, *Secretary of State* v. *Belchamber*, 33 Cal., 396, s. c. 3 C. L. J. 169 ; 10 C. W. N. 289.

The expression "land" is not qualified in any way, so that the Government can acquire *any* land in *any* locality, *Shastri Ram Chandra* v. *Ahmedabad Municipality*, 24 Bom., 600. Though in some Sections "land" is used as equivalent to "interest in land," still the general scheme of the Act is to use the word '*land*" to denote the physical object itself ; *see Bombay Improvement Trust* v. *Jalbhoy*, 33 Bom., 488 : 11 Bom. L. R. 674.

Having regard to the definition of "land" contained in s. 3 of Act X of 1870, there is nothing illegal in a Judge taking into account the value of works on the land which make it suitable for a salt factory in estimating its market-value ; *Joseph* v. *The Sal Company*, 17 Mad., 371.

Fishery right is not "land" within the meaning of the Act, and cannot form the subject matter of statutory acquisition *Raja Shyam Chunder* v. *Secretary of State*, 35 Cal, 525 s. c. 12 C. W. N. 569 : 7 C. L. J. 445. It is only land including the rights arising out of it, but not the rights detached from the land, that can be acquired under the Act, *Ibid.* Also see *Babujan* v. *Secretary of State*, 4 C. L. J. 256. The word "land" includes things attached to the earth, But this does not mean that the things attached to the land can be acquired without the land itself. No subsidiary right in the land, apart from the land itself, can form the subject matter of acquisition, *Dasarath Sahu* v. *Secretary of State*, 35 I. C. 97. See also *Shwe Gaung* v. *The Collector*, 4 L. B. R. 71; *Mangaldas* v. *Asst. Collector of Prant*, 45 Bom., 277.

Clause (b): Person interested :—Primarily, the person entitled to compensation is the person from whom the land is taken, *Maharaja Mahatap Chand* v. *Bengal Coal Co.*, 10 W. R. 391 or the person who is known to be the proprietor thereof, *Issur Chunder* v. *Suttya Doyal*, 12 W. R. 270. One having a permanent and transferable interest in a

tenure is entitled to compensation, *A. M. Dunne* v. *Nobo Krishna* 17 Cal., 144. The benefit of this rule is extended to the person whose permanence and transferabitity of interest is *pre umed* from circumstances, such as payment of rent at fixed rate for nearly 100 years, *Ibid*, see also A. O. D. No. 131 of 1910 decided on 11th April, 1912, *Per Brett* and *Carnduff* JJ. Persons having unexpired leases of the land acquired are persons interested in the land and are entitled to share the compensation, *Collector of Poona* v. *Kaskinath*, 10 Bom. 585. The loss of profits for the unexpired term of the lease should always be taken into accoun', *Bassu* v. *Collector of Lahore*, 18 P. R. 1902.

A tenant-at-will is entitled to compensation for the loss of his limited interest, *Satara Begum* v. *Secretary of State*, (1872-92) 509. In a Calcutta case a tenant-at-will was given only the value of his huts, *Secretary of State* v. *Belchamber*, 33 Cal., 396, s. c. 10 C. W. N., 289 : 3 C. L. J. 169. But see *Sadhu Charan* v. *Secretary of State*, 31 C. L. J. 63. A losee of a tank is in the same position as a yearly tenant of agricultural land. He is a person interested within the meaning of s. 23 of this Act, and is therefore entitled to compensation, *Narain Chandra Baral* v. *Secretary of State*, 28 Cal., 152 : 5 C. W. N. 349.

Raiyats having a right of occupancy in the lands held by them, permanent tenure-holders, putnidars and zemindars are the persons interested, and are entitled to compensation-money, *Godadhur Das* v. *Dhunput Singh*, 7 Cal., 585 : 9 C. L. R. 227.

The words "person interested" include a person having a claim as landlord conflicting with the claim of the person to whom the compensation has been awarded. Therefore such a person (having a claim as landlord) is entitled to come in and ask the Collector to make a reference under sec. 18, and the Civil Court has jurisdiction to decide such a case, *Rani Hemanta Kumari* v. *Hari Charan Guha*, 5 C. L. J, 301. (7 All., 817 ; 7 Cal., 406 and 17 All., 573, F. B., referred to). A person may be interested in the compensation money, within the meaning of this clause without having any interest in the acquired land, *In re Pestomji Jehangir*, 37 Bom , 76=14 Bom. L. R 507=15 I. C. 771.

The person in possession of the land at the time when it is acquired is *prima fac'e* the "person interested," and is entitled to the money paid for it until some one else establishes a prior claim, *Chundee Churn Chatterjee* v. *Bidoo Budden Banerjee*, 10 W. R. 48. See also *Issur Chunder Banerjee* v. *Suttyo Doyal Banerjee and others*, 12 W. R. 270.

A farmer was *held* to be a person interested in the land and entitled to a share in the compensation awarded ; *Nuzeeroodden Ahmed* v. *The Railway Commissioners*, Marsh 91 ; 1 Hay 157 : but workmen or labourers employed on the land are not persons interested ; *Secretary of State* v. *Shanmugaraya*, 20 I. A. 88.

A non-occupancy raiyat also may be a person interested ; *R. Mitter* v. *Anukul Chunder*, 9 C. W. N., 232*n* : 2 C. L. J., 8*n*.

An under raiyat is also a person interested, *Hara Gopal* v. *Abu Bakar*, 3 C. L. J. 36*n* ; but a *bhagidar* is not, *Sheikh Hasrat* v. *Tagatnarain*, 11 C. W. N. 312*n*.

A person in possessjon without title when real owner unknown is a person interested ; *Perry* v. *Clissold and others*, 11 C. W. N. cvi (106). A person who has entered into a valid agreement for the purchase of land is a "person interested" within the meaning of this sub-section, *Chhuttan Lal* v. *Mulchand*, 18 P. R. 1917 s. c. 37 I. C. 822.

A claim to an easement is one relating to an interest in land, 24 W. R. 300 and 20 Bom. 704. See also the *Report of the Select Committee*, dated 24th January 1894. "In order to prevent any doubt as to the right to compensation of persons who own easements affecting lands taken up under the bill, we have added an explanation to the definition of "person interested" making the definition expressly cover such persons."

Person : The word person includes any company or association or body of individuals, whether incorporated or not; General Clauses Act (X of 1897), Sec. 3 (39).

Clause (c) : Collector : His powers :—The Collector is the officer deputed by Government to fix the amount which Government are prepared to offer for compensation for the land ; *In re Esufali Salebhai*. 10 Bom. L. R. 996. He is an expert official charged with the duty of fixing a sum which in his best judgment is the value of the land acquired ; See. *Ezra* v. *Secretary of State* 32 Cal, 605 (629), s. c. 9 C. W. N. 454 : I C. L. J. 227 (231) P. C. The expression "Collector" means also the Chairman of the Corporation of Calcutta, *Secretary of State* v. *Belchambers*, 33 Cal. 396 : 3 C. L. J. 169 : 10 C. W. N. 289. See s. 557 (a) of the Calcutta Municipal Act, III B. C. of 1897, *post*.

A Collector is not a judicial officer, nor the proceedings before him are judicial proceedings, *Ezra* v. *Secretary of State*, 30 Cal. 36 : 7 C. W. N. 249. Affirmed in 32 Cal. 605, s. c. 9 C. W. N. 454 : 1 C. L. J. 227, P. C. : 2 A. L. J, 771 : 7 Bom. L. R. 422. A Collector is not a Court and cannot administer an oath or require a verification. See *Durga Das Rukhit* v. *Queen Empress*, 27 Cal., 820. The Collector performs administrative and quasi-judicial functions, *Harish Chandra* v. *Secretary of State*, 11 C. W. N. 875. The provisions of the C. P. Code for the appointment of a guardian *ad litem* are applicable to proceedings before the Collector : See clause G (ii) and (iii) *post*. Likewise the provisions of C. P. Code for enforcing attendance of witnesses also apply to him under Sec. 14.

An assistant or a Deputy Collector may be invested with the powers of a Collector under this Act. See Boards' Rules, Chap. I.

The expression "Collector" means the Collector of a district including a Deputy Commissioner. It does not include any officer whom the Deputy Commissioner thinks fit to delegate his duties. Where a Deputy Commissioner referred a claim to a Deputy Collector and the latter after enquiry, made a report to the Deputy Commissioner, who simply wrote on the report the word "approved" without giving any opportunity to the claimant to be heard, *Held*, that the award was illegal ; *Mohammad Siddique* v. *Secretary of State*, 8 Oudh Cases 118.

As to the meaning of the expressien "Local Government," see Sec. 3 cl. (29) of the General Clauses Act (Act X of 1897).

Clause (d) : Court :—Ordinarily the Principal Civil Court of original jurisdiction shall be the "Court" under this Act. But the Local Government will have power to appoint a Special Judicial officer within any specified local limits, to perform the functions of a Court. It is only a *Judicial Officer* that can be so appointed. A Sub-Judge or a Munsif may be appointed by the Local Government to perform the functions of the Court under this Act. For land acquired in the town of Calcutta, the District Judge of 24 Perganahs is specially appointed to perform the functions of a Judge under this Act. In Madras, the first Judge of the Court of Small Causes is appointed to perform the functions of a Judge under Act within the looal limits of the ordinary civil jurisdiction of the High Court of Madras. As the jurisdiction thus confered is a special jurisdiction created by a special statute, it is *exclusive*, and cannot be exercised by the ordinary Courts concurrently with the special Court. See *Bhandi Singh* v. *Ramadhin*, 2 C. L. J. 359 s. c. 10 C. W. N. 991. Cf. *Sher Khan* v. *Shamser Khan*, 37 P. R. 1905 s. c. 35 P. L. R. 1905 ; *Bobujan* v. *Secretary of State*, 4 C. L. J. 256. As to the meaning of "Local Government" see cl. (c) *supra*.

The expression "the Court" in the L. A. Act does not include a Collector, nor is there any authority given to the Collecter to administer an oath or to require a verification. A Deputy Collector acting under the L. A. Act is not a Judicial officer, he cannot properly be regarded as a Revenue Court within the terms of s. 476, Cr. P. Code, his proceedings under the former Act are not regulated by the C. P. Code, nor is he right in requiring a petition put in before him to be verified in accordance with that Code, so as to make any false statement punishable as perjury, *Durga Das Rakhit* v. *Queen Empress*, 27 Cal.. 820. Approved in 7 C. W. N. 249 : 30 Cal., 36. Affirmed in 32 Cal., 605, P. C. : 9 C. W. N. 454 ; 1 C. L. J. 227 : 2 A. L. J. 771 and 7 Bom. L. R. 422.

An Additional District Judge as such is competent to hear and dispose of references under this Act, which are made over to him for disposal by the District Judge under the provisions of Sec. 8 (2) of the Bengal, N. W. P. and Assam Civil Courts Act, 1887, *Jogesh Chandra* v. *Rasiklal*

50 I. C. 690. The clause uses the word "Court" and not "Judge." Therefore an Additional District Judge, being a judge of the principal "Civil Court" has jurisdiction to hear L. A. reference, *Jagabandhu Talukdar* v. *Nanda Lal*, 50 I. C. 793 See also *Paresh Nath* v. *Secretary of State*, 16 Cal., 31.

Although the expression "miscellaneous applications" in s. 16 of the Bombay Civil Court Act XIV of 1869 may be large enough to include references by the Collector under Act X of 1870, the latter part of s. 16 indicates that it was not the intention of the Legislature to empower a District Judge to refer to an Assistant Judge applications under Special Acts for disposal, *The first Assistant Collector of Prant Bassein* v. *Ardesir Framji Moos*, 16 Bom. 277.

A conflict having arisen as to right to receive the compensation Rs. 468, awarded, and the District Judge having declined to determine it under the Land Acquisition Act, an interpleader suit was instituted on behalf of the Secretary of State in the Munsif's Court : *Held*, that the suit was rightly brought in the Munsif's Court and that it was not within the jurisdiction of the Small Cause Court ; *Tirupati Raju* v. *Vissam Raju*, 20 Mad., 155.

"To meet, however, the cases of Provinces which have still no courts of separate Civil Jurisdiction, or the case in which pressure of business may require assistance to the Ordinary Civil Court, we have retained the clause in the original definition which empowers the Local Government to appoint Special Judicial Officers to perform the functions of a Judge, under the Act." *Report of the Select Committee, dated 1st February, 1893.*

Clause (e),—See also the definition given in sec. 16 of the Land Acquisition (Mines) Act XVIII of 1885.

The Bank of Bengal is a company within the meaning of this Act, *Ezra* v. *Secretary of the State*, 30 Cal. 36 : 7 C. W. N. 249. Affirmed in 32 Cal. 605, P. C. : 9 C. W. N. 454 : 1 C, L. J. 227 : 2 A. L J. 771 : 7 Bom. L. R. 422, P. C.

N. B : Now, the Indian Companies Act is Act VII of 1913 and the English Act is known as "the Companies (Consolidation) Act, 1908. (8 Edw. VII, C. 69).

Clause (f) : Public Purpose :—The expression "public purpose" is not defined in the Act. What is a public purpose and what is likely to prove useful to the public are matters left to the absolute discretion of the Local Government, and it is not competent to the Court to impose restriction on this discretion, *Ezra* v. *Secretary of State*, 30 Cal. 36 : 7 C, W. N. 249. Affirmed in 32 Cal. 605, P. C. : 9 C. W. N. 454 : 1 C. L. J. 227 : 2 A. L. J. 771 : 7 Bom. L. R. 422, P, C. See also *Balvant Ram Chundra* v. *Secretary of State*, 29 Bom. 480 and *Shelly Bonnerjee* v. *Commissioners of the Port of the Calcutta*, 3 C. L. J. 585 : 33 Cal. 1243 : The definition

given in the Act is a partially inclusive, and not exhaustive definition. *Hamabai* v. *Secretary of State*, 13 Bom. L. R. 1097 (1113). A public purpose is that in which the general interest of the community as opposed to the particular interest of individuals, is directly and vitally concerned, *Moosa Hajee Hassan* v. *Secretary of State*, 13 A. L. J. 120.

With regard to the power of Local Government to acquire land for village-sites, to provide sites for the expansion of villages or towns or for the provision of houses for its own servants, there was a long discussion in the Legislative Council. *See Proceedings in Council 1891, Gazette of India, Part* v, *pp. 19, 24 to 42.*

Acquisition of land for extinguishing fires, the reclaiming of unhealthy localities and for any other measure likely to promote the public safety, health, convenience or education, is a public purpose.—*Shastri Ram Chandra* v. *Ahmedabad Municipality*, 24 Bom. 600. Cf. Cal. Municipal Act (B. C. Act III of 1899) s. 557.

For the acquisition of land within the town of Calcutta, see the Calcutta Municipal Act III of 1899, B. C. sec. 557, and I. L. R. 33 Cal. 396 : 3 C. L. J. 169 : 10 C. W. N. 289.

A declaration made and published under s. 6 of this Act is conclusive evidence that the land is needed for a public purpose or for a company. See s. 6 (3).

Clause (g) : Person entitled to act :—This clause gives a description of the persons who are entitled to act on behalf of others in proceedings under this Act and also to the extent to which they can act. Order XXXII of the Code of Civil Procedure 1908 relates to suits by and against minors and persons of unsound mind. See also the Guardian and Wards Act, VIII of 1890, and Lunacy Act IV of 1912.

The proviso (iv) to this section contemplates those cases only, in which a trustee, executor, guardian of a minor or lunatic are competent to alienate the land for legal necessity. As to the meaning of the word "trustee" See sec. 3 of the Specific Relief Act (Act 1 of 1877). Cf. sec. 3 of the Indian Trusts Act (II of 1882) and Sec. 2 of Act XXVII of 1866 (Indian Trustee Act).

The guardian of a minor's estate has no power to waive a right to compensation, although the owner, had he been of full age, might have waived it. Although the Court of Wards had no power to alienate the land of a minor of whose estate it had charge, yet possession might have been lawfully taken of the land for a public purpose, if there had been due compliance with the provisions of the L. A. Act, as regards compensation to the minor's estate. Where however compensation had not been given, and a merely *nominal* consideration had passed, the Collector not having acted as the representative of the Court of Wards so as to protect the interests of the minor, it has been *held*, that no valid title to the land

was established as against the ward, and that, on his attaining full age, he could recover it with mesne profits; *Luchmessur Singh* v. *Chairman of the Durbhanga Municipality*, 18 Cal. 99, P. C.: L. R. 17 I. A. 90.

Certain land belonging to the applicant, a minor, was taken by the Municipality of Hubli under the Land Acquisition Act X of 1870. The Mamlatdar of Hubli, who was a member of the Municipal Committee, took part in the negotiations for the purchase of the land and also gave evidence as to its value in the enquiry before the Collector. The applicant having refused to accept the award, the matter was referred to the District Judge and on this reference, the Mamlatdar acted as an assessor appointed by the Collector and was also examined as a witness as to the value of the land. But no objection was taken as to his acting as an assessor. *Held*, that the award was bad. Mamlatdar had substantial interest in the matter, sufficient to disqualify him from acting as an assessor. (8 Bom. 553, followed). *Held* also, that the minor applicant was not estopped from objecting to the competency of the Mamlatdar by the fact that his guardian had not raised any such objection in the Court below, and might therefore be taken to have waived it. Assuming that there was a waiver it could not bind the minor, as it was not for his benefit, *Swamirao* v. *Collector of Dharwar*, 17 Bom., 299.

PART II.

ACQUISITION.

Preliminary Investigation.

Publication of preliminary notification and powers of officers thereupon.

4.[1] (1) Whenever it appears to the Local Government that land in any locality is likely to be needed for any public purpose, a notification to that effect shall be published in the official Gazette, and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality.

(2) Thereupon it shall be lawful for any officer,

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1 As to amendments with which this section should be read when land is required for the purposes of a Company, *see* s. 38(*2*), *infra*

either generally or specially authorised by such Government in this behalf, and for his servants and workmen,—

to enter upon and survey and take levels of any land in such locality ;

to dig or bore into the sub-soil ;

to do all other acts necessary to ascertain whether the land is adapted for such purpose ;

to set out the boundaries of the land proposed to be taken and the intended line of the work (if any) proposed to be made thereon ;

to mark such levels, boundaries and line by placing marks and cutting trenches ;

and, where otherwise the survey cannot be completed and the levels taken and the boundaries and line marked, to cut down and clear away any part of any standing crop, fence or jungle ;

Provided that no person shall enter into any building or upon any enclosed court or garden attached to a dwelling-house (unless with the consent of the occupier thereof) without previously giving such occupier at least seven days' notice in writing of his intention to do so.

NOTES.

Definitions :—For definitions of "Local Government," "Land," "Public Purpose" "Collector" See Sec. 3 *ante*.

N. B. :—Note that this section contains the words "is likely to be needed," whereas Sec. 6 contains "is needed." This section speaks of a *notification* whereas Sec. 6 of a *declaration*.

Nature of the Act :—It is an Act authorising the Local Government to make compulsory acquisition of land for public purposes or for companies, and for determining the amount of compensation to be made on account of such acquisition. In making the acquisition the wishes of the owner of the land are wholly irrelevant under the Act. It does not contain any provision for any objection on the part of the owner to the

acquisition itself. All his objections are limited to the amount of compensation and matters connected therewith, such as, measurement and area, *Ezra* v. *Secretary of State*, 30 Cal. 36=7 C. W. N. 249, p. 267.

When land is acquired for one specific purpose, it is not open to the authorities subsequently to abandon that purpose, and to use the land acquired for a different purpose; *Guru Das* v. *Secretary of State*, 18 C. L. J 244. But see *Luchmeswar Singh* v. *Chairman of the Darbhanga Municipality*, 18 Cal., 99, where it has been held that land acquired professedly for one purpose may be used for another legal purpose, of course, so long as no nuisance is created ; see *Rajmohan Bose* v. *E. I. Ry. Co.* 10 B. L. R. 241.

Section 46 of this Act provides penalties for obstructing any person in doing any of the acts authorised by this section. Under s. 38 of this Act, a servant of a company may be authorised to exercise the powers conferred by this section.

It is clear from the use of the word "thereupon" in sub-sec. (2), that the publication of the preliminary notification is a condition precedent for entering upon the land. Entry upon the land without or before the publication of the preliminary notification is not lawful, and then there will be no penalty for obstruction under Sec. 46 *post*. See (1889) 14 A. C. 612.

Where after the publication of a notification for acquisition of certain land the owner of the land invests more capital in it, he does so at his own risk; *Secretary of State* v. *Qamar Ali*, 16 A. L. J. 669, s c. 51 I. C. 501.

Payment for damage.

5. The officer so authorised shall at the time of such entry pay or tender payment for all necessary damage to be done as aforesaid, and, in case of dispute as to the sufficiency of the amount so paid or tendered, he shall at once refer the dispute to the decision of the Collector or other chief revenue-officer of the district, and such decision shall be final.

NOTES.

When the acquisition is made on behalf of a company, s 38 of this Act will apply.

The officer authorised to enter upon the land shall at the time of such entry either pay or tender payment for all necessary damage to be done for entry and preliminary survey, to persons interested and in case of dispute as to the sufficiency of the amount so paid or tendered, he shall at once refer the dispute to the decision of the Collector or other chief

revenue officer of the district, whose decision will be final. The section clearly shows that the dispute cannot be decided by any other officer except the Collector. He is not at liberty to delegate his authority in a case of this sort to an officer specially authorised to perform the functions of a Collector under sec. 3. (c) *Vide the Proceedings in the Council.*

Declaration of intended Acquisition.

Declaration that land is required for a public purpose.

6. (1) Subject to the provisions of Part VII of this Act, whenever it appears to the Local Government that any particular land is needed for a public purpose, or for a Company, a declaration shall be made to that effect under the signature of a Secretary to such Government or of some officer duly authorised to certify its orders :

Provided that no such declaration shall be made unless the compensation to be awarded for such property is to be paid by a Company, or wholly or partly out of public revenues or some fund controlled or managed by a local authority.

(2) The declaration shall be published in the official Gazette, and shall state the district or other territorial division in which the land is situate, the purpose for which it is needed, its approximate area, and, where a plan shall have been made of the land, the place where such plan may be inspected.

(3) The said declaration shall be conclusive evidence that the land is needed for a public purpose or for a Company, as the case may be ; and, after making such declaration, the Local Government may acquire the land in manner hereinafter appearing.

NOTES.

Section 6 provides that when the expediency of the proposed acquisition is established, a **declaration** shall be made *to that effect* under the signature of a Secretary to the Government or of some officer duly

authorised to certify its orders. This provision is subjected to those of part VII of the Act, and to the proviso that no such declaration shall be made unless the compensation to be awarded for such property is to be paid by a company or wholly or partly out of the public revenues or some funds controlled or managed by local authority. Part VII to which the provisions of s. 6 are subjected, deals with the acquisition of land for companies. Section 39 declares that the provision of ss. 6 to 37, both inclusive, shall not be put in force in order to acquire land for any company unless with the previous consent of the Local Government or unless the company shall have executed the agreement hereinafter mentioned. Sec. 6 provides that "whenever it appears to the Local Government that any particular land is needed for any public purpose or for a company, a declaration should be made *to that effect*," the words "public purpose" and "company" are used disjunctively and if the land is required for a company it need be so stated without any reference to a public purpose. The law requires that when any particular land is required for the two purposes for which the Local Government is authorised by the legislature to put the Act into operation, a declaration to that effect should be previously made. It does not require that the intention of the Government should be declared or notified in any particular form. Sec. 6 further provides that the said declaration shall be conclusive evidence that the land is needed for a public purpose or of a company, *Ezra* v. *Secretary of State*, 30 Cal. 36=7 C. W. N. 249. Affirmed in 32 Cal. 605, P. C. : 9 C. W. N. 454 : 1 C. L. J. 227 : 2 A. L. J. 771 : 7 Bom. L. R. 422, P. C. The declaration of the intended acquisition under s. 6 of the Act and the direction to the Collector under s. 7 of the Act, are the only conditions precedent to the exercise of jurisdiction under the Act and when these conditions are complied with no irregularity in the subsequent inquiry can vitiate the proceedings, *Daryadinomal* v. *Secretary of State*, 2 Sind. L. R. 68.

The use of the words "to that effect" shows that the declaration need not be in any particular form. It will be quite enough if it substantially represents the object of the acquisition and conforms to the provisions prescribed by the Act. Cf. *Ezra* v. *Secretary of State*, 30 Cal., 36, s. c. 7 C. W. N. 249.

The provisions of this section and the other sections of this Act are also applicable where the acquisition is made by the Municipal Corporation of Calcutta under the provisions of s. 557 of the Calcutta Municipal Act, III of 1899, *Secretary of State* v. *Belchambers*, 33 Cal., 396 : 10 C. W. N. 289 : 3 C. L. J. 169. Cf. *Shastri Ramchandra* v. *Ahmedabad Municipality*, 24 Bom. 600.

The Government has power to take up land in any locality for any public purpose and its declaration under s. 6 that the land is needed for a

public purpose is conclusive evidence that the land is needed for such purpose. *Shastri Ram Chandra* v. *Ahmedabad Municipality*, 24 Bom. 600 ; (3 W. R. 27 referred to)

From a close examination of the provisions of the Act it appears that there is nothing to prevent the Government from acquiring the land, and then dealing with it in any manner it chooses. Neither the tenant nor the Court has any concern with the arrangements between the Government and the Municipality, after acquisition of the land. Section 6, clause (3) of the Act says, that after making the declaration, the Local Government may acquire the land in manner hereafter provided, so that it is the Local Government that obtains the title by acquisition, *Babu Jan* v. *Secretary of State*, 4 C. L. J. 256, p. 258.

In cases where the Public Works Department has entered upon and caused damage to land before the publication, under sec. 6 of the Act, of the notice of its intended acquisition or has removed trees or crops on the land before the Collector's taking possession thereof, the remedy of the owner could only be a separate suit by him for the damages incurred, *Ma Gyi* v. *Secretary of State for India*, 3 L. B. R. 117.

When the land actually taken up is different from that mentioned in the declaration, the whole proceedings of the Collector will be void and therefore there can be no valid reference to the Civil Court, *Gajendra Sahu* v. *Secretary of State*, 8 C. L. J. 39. So, where declaration was at first made for the acquisition of a part of a land, but afterwards at the desire of the owner of the land under Sec. 49 (1), acquisition of the whole land became necessary, it has been held that fresh declaration should have been made and without it the whole proceeding was bad ; *Bhagwandas Nagindas* v. *Special Land Acquisition Officer*, 17 Bom. L. R. 192=28 I. C. 489. As to the inexpediency of the plurality of declarations or of piece-meal acquisition see *Fink* v. *Secretary of State*, 34 Cal., 599.

After the publication of a notification for acquisition, the owner should not invest any capital in his land (under acquisition), if he does so, he does at his own risk, *Secretary of State* v. *Qamar Ali*, 16 A. L. J. 669, s. c. 51 I. C. 501.

Wholly or *partly* :—The word "partly" serves to meet the cases in which public institutions are only *partly* supported out of public revenues (See Third Report, Cl. 6.)

Local authority : See Sec. 3, Cl. (28), General Clauses (Act, X of 1897).

Sub-sec. (2) : Gives the essential requirements of a declaration.

Sub-sec. (3) : Mentions the effects of a declaration. It says that the declaration is *conclusive* as well as *authoritative*. As to what is 'conclusive evidence' see Sec. 4 of the Evidence Act.

After declaration, Collector to take order for acquisition.

7. Whenever any land shall have been so declared to be needed for a public purpose, or for a Company, the Local Government, or some officer authorised by the Local Government in this behalf, shall direct the Collector to take order for the acquisition of the land.

NOTES.

Under this section the Board of Revenue is authorised by the Local Government to direct the Collector to take order for the acquisition of land and the Collector is to follow the rules framed by the Board of Revenue in this behalf. The Land Acquisition Collector cannot take any action under the Act, until he has received the directions of the Board of Revenue. As to whether any officer other than the Collector can be directed to take order under this section, see *Macdonald* v. *Secretary of State*, 123 P. R. 1908=167 P. W. R 1908=19 P. L. R. 1909. The declaration of the intended acquisition under S. 6 of the Act, and the direction to the Collector under S. 7 are the only conditions precedent to the exercise of jurisdiction under the Act, and when these conditions are complied with, no irregularity in the subsequent inquiry can vitiate the proceedings. *Daryadino Mal* v. *Secretary of State*, 2 Sind, L. R. 68. The jurisdiction of the Collector is limited by the terms of the declaration. If he goes beyond it, his proceedings so far becomes *ultra vires*, *Harish Chunder* v. *Secretary of State*, 11. C. W. N. 875. When proceedings under the Act are taken on behalf of a Municipal Board, the Board has no power to withdraw from the Acquisition. It is the Government alone that can withdraw from the proceedings, *Secretary of Seate* v. *Qamar Ali*, 16 A. L. J. 669, s. c. 51 I. C. 501.

Land to be marked out, measured and planned.

8. The Collector shall thereupon cause the land (unless it has been already marked out under section 4) to be marked out. He shall also cause it to be measured, and (if no plan has been made thereof) a plan to be made of the same.

NOTES.

After receipt of the directions provided for in sec. 7, the Collector shall cause the land to be measured and a plan prepared. These steps are necessary to prevent the acquisition of a land different from the one described in the declaration otherwise the whole acquisition will be bad; Cf. *Gajendra* v. *Secretary of State*, 8 C. L. J. 39.

9. (1) The Collector shall then cause public notice to be given at convenient places on or near the land to be taken, stating that the Government intends to take possession of the land, and that claims to compensation for all interests in such land may be made to him.

Notice to persons interested.

(2) Such notice shall state the particulars of the land so needed, and shall require all persons interested in the land to appear personally or by agent before the Collector at a time and place therein mentioned (such time not being earlier than fifteen days after the date of publication of the notice), and to state the nature of their respective interests in the land and the amount and particulars of their claims to compensation for such interests, and their objections (if any) to the measurements made under section 8. The Collector may in any case require such statement to be made in writing and signed by the party or his agent

(3) The Collector shall also serve notice to the same effect on the occupier (if any) of such land and on all such persons known or believed to be interested therein, or to be entitled to act for persons so interested, as reside or have agents authorised to receive service on their behalf, within the revenue district in which the land is situate.

(4) In case any person so interested resides elsewhere, and has no such agent, the notice shall be sent to him by post in a letter addressed to him at his last known residence, address or place of business and registered under Part III of the Indian Post Office Act, 1866.[1]

1 *See* now the Indian Post Office Act, 1898 (VI of 1898), General Acts, Vol. VI.

NOTES.

After measurement of land and preparation of the plan, the Collector shall issue notices to all persons interested, to state the nature of their respective interests, and the amount and the particulars of their claims to compensation in respect of such interests and their objections to the measurement, if any, made under sec. 8. The Collector may require persons interested to put their statements in writing in all cases in which he may consider this course necessary or desirable,

The Collector is required under this section to serve a *general* or *public* notice and a *special* or *personal* notice to all persons interested and to occupiers. In case any person so interested resides elsewhere, and has no agent, the notice shall be sent to him by post in a letter addressed to him at his last known residence and place of business.

Definitions : For definitions of "Collector," "land" and "persons interested" etc. see Sec. 3 *ante*.

Where all the preliminary steps, including the taking of possession, had been duly taken, with only this exception that by some mistake the name of a person claiming permanent tenancy in the land acquired was omitted from the report of the Sub-Deputy Collector and no special notice was issued to him, but that he had knowledge of the proceedings under the Act, and did not appear merely because notice was served upon him, it was held that the *bonafides* of the proceedings cannot be questioned by him. But where it was known or believed that a person is interested and yet the Collector *wilfully* and *perversely* refused to him notice, then his proceedings cannot be considered *bona-fide*, and should be held to be colourable and therefore inoperative in vesting the land in Government. Land acquired under the Land Acquisition Act, vests absolutely in the Government, free from all incumbrances, after a *bona-fide* award or reference by the Collector has been made and possession taken, even when no special notice under sec. 9 has been served on persons known or believed to be interested therein, *Ganga Ram Marwari* v. *Secretary of State*, 30 Cal., 576. (*North London Ry. Co.* v. *Metropolitan Board of Works*, 28 L. J. Ch. 909, and *Galloway* v. *Mayor and Commonalty of London*, L. R. I. H. L. 34, referred to.)

Notice : There should be *two* notices as pointed out above. Note that sub-sec. (1) speaks of *giving* notice and sub-sec (3) of *serving* notice. This difference in the language may lend support to the contention that the public notice need not be a written one and may be given by beat of drum. This contention however loses its force when we remember that sub-sec. (2) requires such a notice to *state* certain particulars and *make* certain requisition.

Any time before giving his award, the Collector has jurisdiction to

deal with any claim made to him under sub-sec. (2) of this section, *Secretary of State* v. *Sohan Lal*, 76 P. W. R. 1918=60 P. R. 1918=44 I. C. 883. The proceedings of a Collector and the award by him are not void by reason of the fact that no notice was served on the occupier in accordance with S. 9 (3) or S. 45 of the Act, *Kasturi Pillai* v. *Municipal Council, Erode*, 37 M. L. J. 618, s. c. 43 Mad. 280. If the Collector wilfully and perversely abstains from giving the necessary notice to the owner of the land under Sec. 9 (3) his proceedings cannot be considered *bona fide* and are inoperative in vesting the land in Government; but where through mere inadvertance or mistake a person interested has not had notice served upon him, the proceedings are not thereby invalidated, *Secretary of State* v. *Qamar Ali*, 16 A. L. J. 669 s. c. 51 I. C. 501.

The **Notice** under sec. 9 of the Act must be issued by the Collector and must call on persons having claims, to appear before him personally and put forward their claims on a date fixed; and on that date the Collector himself ought to make enquiries, *Mohammad Siddique* v. *Secretary of State*, 8 Oudh Cases 118. In sub-section (2) of the section it is intended that the owner of the property should appear and state his claim in the manner provided by the clause so as to enable the acquisition officer to make a fair, reasonable and proper award based upon a proper enquiry. *Secretary of State* v. *Bishan Dat*, 33 All. 376, s. c. 8 A. L. J. 115=9 I. C. 423. See also *Narain Dat* v. *Superintendent of Deradun*, 37 All. 69, s. c. 12 A. L. J. 1319=26 I. C. 795. Substantial response to the Collector's notice entitles the claimant to the benefit of this section so as to enable him to put forward a written claim, *Gyanendra Nath* v. *Secretary of State*, 25 C. W. N. 71=61 I. C. 532. So, where a claimant does not appear to file objections on the date mentioned in the notice, but on a subsequent date which was sufficiently long before the making of the award, it was *held* that the claimant did not omit to make a claim simply because he did not make it by the date originally fixed, *Secretary of State* v. *Sohan Lal*, 76 P. W. R. 1918=60 P. R, 1918=44 I. C. 883. Omission to make a claim within the meaning of this section will justify the District Judge in refusing to enhance the Collector's award, *Ram Prosad* v. *Collector of Aligarh*, 40 I. C. 274; also the cases under Sec. 25 *post*.

The facts that there had been previous negotiations between the Government and a person whose land the Government wished to acquire and that the Government was aware of the price which the owner had asked for the land would not afford a sufficient reason for the owner omitting to put in any claim under sec. 9 of the Act, *Narain Dat* v. *Superintendent of Dehradun*, 37 All. 69=26 I. C. 795=12 A. L. J. 1319. Under Sec. 9 (3) of this Act, the occupier of land concerning which a public notice has been given under clause (1) of section 9 is entitled to

such notice as will give him, in the same manner as the persons mentioned in clause (2) fifteen days' interval in which to state before the Collector the nature of his interest in the land and the particulars of his claim for compensation, *Krishna Shah* v. *Collector of Bareilly*, 39 All. 534=15 A. L. J. 450=40 I. C. 76 : The words "to the same effect" mean that the second notice should have the same matters mentioned in it, including the time, as are mentioned in the first notice (*Ibid*).

The word "claimant" as used in this Act, means a claimant to compensation, and Government is not a claimant, as it does not *claim* compensation, *Deputy Collector, Calicut Division* v. *Aiyavu Pillay*, (1911) 2 M. W. N. 367=9 M. L. T. 272=9 I. C 341.

The notice under sec. 9 of the Act must contain the material facts which would enable the land-owner to identify the land intended to be taken up. Where, therefore, the land to be acquired is affected with a franchise, a description of the land simply is inadequate and the franchise should also be described. Where the Statute provides a certain period of time within which claims and objections are to be filed, a notice fixing a shorter time is in contravention of the Statute and therefore defective. The provisions of the Act must be strictly complied with, *Rameswar Singh* v. *Secretary of State*, 34 Cal. 470 ; 11 C. W. N. 356 ; 5 C. L. J. 669.

Power to require and enforce the making of statements as to names and interests.

10. (1) The Collector may also require any such person to make or deliver to him, at a time and place mentioned (such time not being earlier than fifteen days after the date of the requisition), a statement containing, so far as may be practicable, the name of every other person possessing any interest in the land or any part thereof as co-proprietor, sub-proprietor, mortgagee, tenant or otherwise, and of the nature of such interest, and of the rents and profits (if any) received or receivable on account thereof for three years next preceding the date of the statement.

(2) Every person required to make or deliver a statement under this section or section 9 shall be deemed to be legally bound to do so within the meaning of sections 175 and 176 of the Indian Penal Code.[1]

1. *See* the revised edition as modified up to 1st April, 1903.

NOTES.

When the Collector has not the information required to enable him to serve notices under section 9, he will have recourse to the provisions of sec. 10, under which he is authorised to require any person to make or deliver to him at a time and place the name of every other person possessing any interest in the land ; any person disobeying the requisition of the Collector makes himself liable under secs. 175 and 176 of the Indian Penal Code.

A Deputy Collector acting under the Land Acquisition Act is not a Judicial Officer. He cannot be properly regarded as a Revenue Court within the terms of section 476, Criminal Procedure Code. There is no authority given to the Collector to administer an oath or to require a petition put in before him to be verified in accordance with the Code of Civil Procedure so as to make any false statement punishable as perjury. An exaggeration or overestimation of the value of land cannot properly constitute a false statement, denounced as an attempt to cheat, which would demand a prosecution for perjury, and the fact that some years before the land was offered for sale at a much lower price is no sufficient ground for imputing such an offence, *Durga Das Rakhit* v. *Queen-Empress*, 27 Cal., 820.. The claimants in the above case were again prosecuted under section 177, Indian Penal Code, on the complaint of the Land Acquisition Deputy Collector for having given false information in certain written statements that they had made to the Collector in response to a call under section 9, but they were again acquitted on the grounds that the prosecution was bad, that the Magistrate should not have issued processes against the accused and that his action in the matter was without jurisdiction, *Durga Dass Rakhit* v. *Umesh Chandra Sen*, 27 Cal., 985 ; 5 C. W. N. 131. Prosecution for giving false information should not be started until the final disposal of the Land Acquisition case, *Ibid.* It will be observed that section 177 Indian Penal Code is not made applicable by this section as was erroneously stated in the case of 27 Cal., 985. A person making a false statement before the Collector does not make himself liable for giving false testimony. The only liability is for disobedience of orders, *Ezra* v. *Secretary of State*, 30 Cal., 36 (84) s. c. 7 C. W. N. 249.

Throughout the proceedings, the Collector acts as the agent of Government for the purposes of acquisition clothed with certain powers to require the attendance of persons to make statements relevant to the matters which he has to enquire into. He is, in no sense of the term, a Judicial Officer, nor is the proceeding before him a judicial proceeding, *Ezra* v. *Secretary of State*, 30 Cal., 36 ; 7 C. W. N. 249. Affirmed in 32 Cal. 605 P. C.: 9 C. W. N. 454 : 1 C. L. J. 227 : 2 A. L. J. 771 : 7 Bom. L. R. 422, P. C. Followed in 38 Cal. 230 : 12 C. L. J. 505 = 15 C. W. N. 87 = 8 I. C. 107.

The object of section 10 clause (1) is to enable the Collector to have an estimate of the rents and profits ordinarily received or receiveable from the property in question, in order that he may be able fairly to assess a claim for compensation. It is not possible to assess that claim for compensation on the rents and profits received for one year only. Three years is the period taken in Government estimates, hence a statement for three years was considered as fair. *See the proceedings in the Council.*

Enquiry into Measurements, Value and Claims, and Award by the Collector.

Enquiry and award by Collector.

11. On the day so fixed, or on any other day to which the enquiry has been adjourned, the Collector shall proceed to enquire into the objections (if any) which any person interested has stated pursuant to a notice given under section 9 to the measurements made under section 8, and into the value of the land, and into the respective interests of the persons claiming the compensation, and shall make an award under his hand of—

(i) the true area of the land ;

(ii) the compensation which in his opinion should be allowed for the land ; and

(iii) the apportionment of the said compensation among all the persons known or believed to be interested in the land, of whom, or of whose claims, he has information, whether or not they have respectively appeared before him.

NOTES.

This section deals with the final stage of the Collector's proceedings, viz. his enquiry and award.

On the day fixed the Collector shall proceed to enquire into the objections of the persons interested regarding the measurement and value of the land and also into the respective interests of the persons claiming the compensation and then to make an award regarding the following particulars—

(1) the true area of the land, (2) the compensation which in his opinion should be allowed for the land, and (3) the apportionment of the said compensation among all other persons who are known or believed to be interested in the land of whom or of whose claims he has informformation whether or not they have respectively appeared before him, (Cf. *In re Pestonji Jehangir*, 14 Bom. L. R. 507=15 I. C. 771). When once the Special Collector has been appointed by the Local Government, the Act casts upon that Collector the duty not only of initiating the enquiries, but of conducting those enquiries to their lawful end in the award of a particular sum for compensation; *Dosabhai* v. *Special Officer, Salsette*, 36 Bom. 599=16 I. C. 549=14 Bom. L. R. 592. During enquiry the claimant ought to place all the available materials before the enquiry officer. The officer should not treat the informations supplied by the claimant with suspicion. Proof of facts before him need not be in the the strict Judicial form, *In re Sukhanand*, 34 Bom., 486, s. c. 11 Bom. L. R. 1176. The word "award" in this section means the conclusion of the Collector. The word "award" has nowhere been defined in the Act. But from a reference to the sections in which it occurs it seems that a decision or determination which does not decide in some form or other the question of compensation is not an award, *Sarat Chandra Ghose* v. *Secretary of State*, 46 Cal., 861. The proceedings resulting in this "award" are administrative and not judicial. The "award" in which the enquiry results, is merely a decision binding on the Collector as to what sum shall be tendered to the owner of the land; and that if a judicial ascertainment of value is desired by the owner, he can obtain it by requiring the matter to be referred by the Collector to the Civil Court.—*Ezra* v. *Secretary of State*, 32 Cal., 605, P. C. : 9 C. W. N. 454 : 1 C. L. J. 22 : 2 A. L. J. 771 : 7 Bom. L. R. 422, P. C. : Affirming 30 Cal. 36 : 7 C. W. N. 249, where it has been held that the meaning to be attached to the word "award" and its nature and effect. must be arrived at not from use of the same expression in both instances, but from the examination of the provisions of the law relating to the Collector's proceedings, culminating in the award. The considerations to which we have referred satisfy us that the Collector acts in the matter of enquiry and the valuation of the land only as an *agent* of the Government and not as a Judicial Officer and that consequently although the Government or the company at whose instance the Government is acquiring the land, is bound by his proceedings, the persons interested are not concluded by his finding regarding the value of the land or the compensation to be awarded. His enquiry and his valuation are departmental in their character for the purpose of enabling the Government to make a tender through him to the persons interested. Such tender once made is binding on the Government and the Government cannot require that the value fixed by

its own officer acting on its behalf should be open to question at its own instance before the Civil Court. The Collector's award is only a tender, binding on the acquiring party, and the claimants are not bound to accept it ; *Gangadas Mulji* v. *Haji Ali*, 18 Bom. L. R. 826 s. c. 36 I. C. 433. An award under the Act is not "made" until it is announced or communicated to the persons interested, because, to hold that it is "made" as soon as it is signed by the Collector would, in many cases result in grave hardships. *Macdonald* v. *Secretary of State*, 123 P. R 1908=167 P. W. R. 1908=19 P. L. R. 1909.

As between the claimants *inter se* an award by a Collector under sec. 11, does not amount to an adjudication of any question regarding the apportionment of any compensation adjudged under the Land Acquisition Act. Any such question can be determined by the Civil Court ; *Srimati Punnabati Dai* v. *Raja Pudmanund Singh*, 7 C. W. N. 538.

Nature of the Collector's proceedings —The Collector, when he holds an enquiry and makes an award under Sec. 11 of the Land Acquisition Act, is not a Court but is only an agent of the Government ; therefore the High Court has no jurisdiction to review an order made by him, under this section, *British India Steam Navigation Co.* v. *Secretary of State*, 38 Cal., 230=12 C. L. J. 505—15 C. W. N. 87= 8 I. C. 107. *Shwe Gaung* v. *The Collector* 4 L. B. R. 71. Similarly, it has been ruled by the Judicial Committee that the Collector is in no sense of the term a judicial offic r and that the proceeding before him is not a judicial proceeding but is simply an adminis'rative one, *Ezra v. Secretary of State*, 32 I. A. 93=32 Cal. 605—9 C. W. N. 454=1 C. L. J. 227=2 A. L. J. 771—7 Bom. L. R. 422 P. C =2 S. L. R. 68. *Farman Shah v. Secretary of State*, 63 P. R. =1907 *Maharaja Sir Rameshur* v. *Secretary of State*, 34 Cal. 407=5 C. L. J. 669. s. c. 11 C. W. N. 356 ; *Shwe Gaung* v. *The Collector*, 4 L. B. R. 71. Proceedings under the L. A. Act, until the matter comes before the Land Acquisition Judge are only administrative and not judicial proceedings ; therefore it may be argued that a Collector is not amenable to the revisional jurisdiction of the High Court. A *mandamus* may, it seems, may issue in a proper case directing him to do a particular act, *Best & Co. Ltd,* v. *Deputy Collector of Madras*, 36 I. C. 621, s. c. (1916) 2 M. W. N. 348 : 20 M. L. T. 388 ; 4 L. W. 535. See also *Secretary of State* v. *Qamar Ali*, 16 A. L. J. 669, s. c. 51 I. C. 501. Similarly, it has been held by Madras High Court that the Collector in making his award is not acting judicially, *Kasturi Pillai* v. *Municipal Council, Erode*=37 M. L. J. 618=53 I. C. 646 =10 L. W. 331=26 M. L. T. 268. See also, *Gangaram* v. *Secretary of State*, 30 Cal., 576. But when the Collector rejects an application asking for a reference to the Civil Court, he acts judicially and his order is then subject to revision by the High Court, *Administrator General of Bengal v. Land*

Acquisition Collector, 24-Perganahs, 12 C. W. N. 241. See also *Krishna Das Roy v. Collector of Pabna*, 16 C. L. J. 165=16 C. W. N. 327=13 I. C. 470. *Janaki Nath* v. *Ram Chandra Khan* (an unreported case) Civ. R. 34 of 1917 decided on 4th July 1917. *Haridas* v. *Municipal Board, Lucknow*, 16 O. C. 374=22 I. C. 652 ; *Secretary of State* v. *Jivan Baksh*, 36 I. C. 213=67 P. R. 1916. *Saraswati Pattack* v. *Land Acquisition Deputy Collector of Champaran*, 2 P. L. J. 204 ; *Parmeswara* v. *Land Acquisition Collector, Palghat*, 42 Mad, 231, s. c. 36 M. L. J. 95=49 I. C. 659. For a contrary view see *Messrs. Best & Company* v. *Deputy Collector of Madras*, 36 I. C. 621=(1916) 2 M. W. N. 348 : 4 L. W. 535 : 20 M. L. T. 388 which is obviously based upon a mis-reading of the cases reported in 38 Cal., 230 and 32 Cal. 605 mentioned above, *Rafiuddin* v. *Secretary of State*, 31 I. C. 76, s. c. 65 P. R. 1915=144 P. W. R. 1915. See also *Robert Leslie* v. *Collector of Mergui*, 1. L. B. R. 132.

An award without assessment of compensation for the land acquired is not a valid award, *Bijoy Kumar Addy* v. *Secretary of State*, 25 C. L. J. 476=39 I. C. 889. As to the effect of splitting up of award by the Collector see *Vengu Naidu* v. *Deputy Collector of Madura*. 34 M. L. J. 279, s. c. 45 I. C. 468.

An award though not bearing the full official signature of the officer making it is valid if it bears the initials of such officer, *Ghulam Mohyuddin* v. *Secretary of State*, 48 P. R. 1914=203 P. L. R. 1914=149 P. W. R. 1914=24 I. C. 379.

Requirements of a valid proceeding :—The provisions of this section require that a certain degree of formality shall attend the making of an award, and an award which is under the hand of a person other than the person or official authorized to take action under Sec. 7, cannot be said to be under the hand of the Collector. *Macdonald* v. *Secretary of State*, 123 P. R. 1903=167 P. W. R 1908=19 P. L. R. 1909. To give validity to the proceedings and finality to the award, every essential pre-requisite should be strictly complied with, *Maharaja Sir Rameswar Singh*, v. *Secretary of State*, 34 Cal. 470=5 C. L. J. 669 (676)=11 C. W. N. 356 ; but any deviation from the procedure herein prescribed, will not render the proceedings, *ultra vires* *Farman Shah* v. *Secretary of State*, 63 P. R. 1907. Cf. *Daryadinamal* v. *Secretary of State*, 2 S. L. R. 68.

The enquiry prescribed by this section should be personally made by the officer directed to take order for acquisition under sec. 7 *ante*. So where a Deputy Commissioner referred a claim to a Deputy Collector, who after enquiry reported to the Deputy Commissioner who wrote on the report the word "approved" without giving any opportunity to the claimant to be heard—*held*, there was no legal award such as could be

referred to the Civil Court, *Mohammad Siddque* v. *Secretary of State*, 8 Oudh Cases 118. Mere delay in completing the acquisition of a piece of land does not invalidate the proceedings, *Secretary of State* v. *Qamar Ali*, 16 A. L. J. 669 s. c. 51 I. C. 501.

When the Collector, once makes the enquiry prescribed by the Act and reaches his own conclusion as to the amount of compensation to be awarded to the claimant, it is not competent to the Government to set aside the conclusion and to direct the Collector to substitute a smaller amount than that which he has determined to offer, *Dossabhai* v. *Special Officer, Salsette Building Sites*, 36 Bom., 599, s. c. 14 Bom. L. R. 592 : 16 I. C. 549.

The *onus probandi* varies according to the probative value of the Collector's inquiry under section 11 of the Act, and if he makes no inquiry or gives no reasons for his valuation the *onus* on the claimant is nominal, and the Special Judge must decide on the weight of evidence, *Fink* v. *The Secretary of State*, 34 Cal., 499.

Award of Collector when to be final.

12. (1) Such award shall be filed in the Collector's office, and shall, except as hereinafter provided, be final and conclusive evidence, as between the Collector and the persons interested, whether they have respectively appeared before the Collector or not, of the true area and value of the land, and the apportionment of the compensation among the persons interested.

(2) The Collector shall give immediate notice of his award to such of the persons interested as are not present personally or by their representatives when the award is made.

NOTES.

The award which the Collector makes does not possess any finality so far as the person interested are concerned, for, under sec. 18, any person interested, who has not accepted the award may, within a certain time, by a written application to the Collector require a reference of the matter for the determination of the Civil Court.

An award made by the Collector becomes *final* and binding only when it is filed under this section. The mere signing of the award by the Collector does not make it conclusive. Before filing an award it is open to the Collector to destroy one which he has already signed and to substitute

another in its place, *Kooverbai Sorabji* v. *Asst. Collector, Surat*, 59 I. C. 429, s. c. 22 Bom. L. R. 1136. The actual payment of the compensation money is not a part of the award and is not necessary to the completion of it, *Miran Baksh* v. *Feroze, Din*, 17 I. C. 395—232 P. L. R. 1912.

The award made by the Collector under sec. 11 has to be *filed* in the Collector's office, and shall, except as provided by sec. 18 be final and conclusive evidence as between the Collector and the persons interested. The amount of compensation fixed by the Collector is binding upon the Government but not on the persons interested, who under the provisions of sec. 18 may, by a written application to the Collector, require the matter to be referred to the Civil Court. But if they do not avail themselves of the provisions of sec. 18, then the award made under sec. 11, will be conclusive and binding upon them, *Ezra* v. *Secretary of State*, 32 Cal., 605. P. C.: 9 C. W. N. 454 : I. C. L. J. 227 : 2 A. L. J. 771 : 7 Bom. L. R. 422, P. C. Likewise it has been held that an award made by a Collector is final : and the validity of the award cannot be contested in Civil Court, unless a party had availed himself of his right to demand a reference to the Court under sec. 18 of the Act, *Sherkhan* v. *Shamsher Khan*, 37 P. R. (1105.) 35 P. L. R. (1905).

Where the notice is defective, and there have been grave irregularities, the finality provided for in section 12, does not attach to the award, which is no bar to a Civil Suit, *Rameswar Sing.* v. *Secretary of State*, 34 Cal. 470=11 C. W. N. 356: 5 C. L. J. 669. See also *Manthara Vadi* v. *Secretary of State*, 27 Mad. 535.

The award of the Collector, who under sec. 11 is authorized to deal with the questions of apportionment, is declared by sec. 12 to be final except as thereinafter provided, only as between the Collector on the one hand and the body of claimants on the other, and not as between the claimants *inter se*. If there is any question raised as between the claimants that can be determined only by the Civil Court. Where an award has been made by the Collector, but has not been followed by a reference to the Civil Court under sec. 18, there has been adjudication of the rights of the claimants *inter se* ; and a claimant who appeared before the Collector when the award was made, but yet did not apply for a reference under sec. 18 of the Act, can maintain against any person who may have received the whole or a part of the compensation awarded, a civil suit to establish his own claims to such compensation under the last proviso of sub-sec. (2) ot sec. 31 of the Land Acquisition Act, *Punnabati Dai* v. *Pudmanand Singh*, 7 C. W. N. 538. (7 Cal. 388, P. C., followed). The Collector's award being final and conclusive, the Government cannot ask for a reference under sec. 18 ; see *Municipal Corporation of Pabna* v. *Jogendra*, 13 C. W. N. 116. The award being *final*,

it is not open to the parties to bring a suit to set aside an award or to contest it in a manner except that provided by the Act itself. But this does not preclude a party from litigating a question of apportionment with a rival claimant, *Srimati Punnabati* v. *Raja Padmanand*, 7 C. W. N. 538 (541). See also *Bhandi Singh* v. *Ramadhin*, 991. This section does not bar such suits as are contemplated in sec. 52 *post* or in Arts. 17 and 18 of the Limitation Act. *Nilkantha* v. *Collector of Thana*, 22 Bom. 802. A copy of the Collector's award may be had by any person claiming under it free of charge (See sec. 51 *post*), The award is not chargeable with any stamp duty.

If a person interested in the land acquired has any objection to the measurement made by the Collector or to the amount of compensation awarded by him, he must obtain a reference to the Court of the Special Judge, and cannot litigate the matter by a suit in the ordinary Courts. If the objection, relates to the *locus standi* of a claimant or to the question of apportionment amongst the different claimants, the matter may be investigated, either upon a reference to the Court of the Special Judge or by a suit in the ordinary Courts. But although either of these two methods is available, the claimant, if he has made his choice and selected his remedy, cannot, because he has failed in the course adopted, fall back upon the other, *Bhando Singh* v. *Ramadhin Rai*, 2 C. L. J. 350: 10 C. W. N. 991. (7 Cal. 388, P. C. 12 Cal., 33 and 7 C. W. N. 538, referred to.)

Whenever a question of title arises between rival claimants, it must, under the terms of the Land Acquisition Act, be decided in the case, and cannot be made the subject of a separate suit, *Babujan* v. *The Secretary of State*, 4 C. L. J. 256.

In sub-sec. (2) of sec. 12 of the Land Acquisition Act, the *immediateness* of the notice is provided for solely in the interests of the public with a view to ensure that the compulsory acquisition shall be, in all respects, facilitated and completed without delay. When the sub-section directs that the Collector shall give "immediate notice" it does not confer a right upon the person to such notice as to entitle him to say that a late notice is bad, but it impose a duty upon the Collector in the interests of the public to insure prompt and vigorous action on his part for speedy determination of all disputes. Where a statute or a written contract provides that certain thing shall be done "immediately" you must, in construing that word, pay regard to the object of the statute or the contract as the case may be and the position of the parties and the purpose for which the legislature or the parties intend that it shall be done immediately, *In re Land Acquisition Act*, Bom. L. R., 697 : 30 Bom. 275, Cf. 12 Bom., 276. An award written or signed by the Collector without being made in the presence of or communicated to the applicant is *qua* the applicant no award at all, and

the period of limitation for filing an objection to the award can only be computed from the date, when the award is made within the applicant's knowledge, *Haridas Pal* v. *Municipal Board Lucknow*, 16 O. C. 374=22 I. C. 652.

A notice under this section must be served in the manner indicated in sec. 45 (2) and (3) *post*. So, such a notice cannot be on the manager of the receiver of an estate in the absence of the receiver himself, *Raja Papamma* v. *Revenue Divisional Officer, Guntur*, 33 M. L. J. 472 (1917) M. W N. 878=42 I. C. 235=24 M. L. J. 471.

The provisions of sections 9 to 12 are not mandatory but merely directory, *Daryadinomal* v. *Secretary of State*, 2 S. L. R. 68.

13. The Collector may, for any cause he thinks fit, from time to time adjourn the enquiry to a day to be fixed by him.

Adjournment of enquiry.

NOTES.

This section gives the Collector a discretion in the matter of adjournment. It does not take away his power to proceed *ex-parte*. Cf. sections 11 and 12.

14. For the purpose of enquiries under this Act, the Collector shall have power to summon and enforce the attendance of witnesses, including the parties interested or any of them, and to compel the production of documents by the same means, and (so far as may be) in the same manner, as is provided in the case of a Civil Court under the Code of Civil Procedure.

Power to summon and enforce attendance of witnesses and production of documents.

NOTES.

For the purpose of his enquiries under this Act, the Collector is empowered to summon and enforce the attendance of witnesses, including the parties interested or any of them and to compel the production of documents by the same means (and so far as may be) as is provided in the case of a Civil Court under the Code of Civil Procedure. Although he has the power of summoning witnesses, still a person making a false statement before him, is not liable for giving false testimony. A person disobeying the summons is however liable for disobedience of orders. Throughout the

proceedings the Collector acts as an agent of the Government for the purposes of acquisition clothed with certain powers to require the attendance of persons to make statements relevant to the matters which he has to enquire into. He is in no sense of the term a Judicial Officer, nor the proceeding before him a Judicial proceeding, *Ezra* v. *Secretary of State*, 30 Cal. 36 ; 7 C. W. N. 249. Affirmed in 32 Cal., 605, P. C.=9 C. W. N. 454 =1 C. L. J. 227, P. C.

For the provisions of the Civil Procedure Code regarding the summoning and attendance of witnesses, see Order XVI of the Code ; and for compelling the production of documents, see orders XI and XIII of the Code.

15. In determining the amount of compensation, the Collector shall be guided by the provisions contained in sections 23 and 24.

Matters to be considered and neglected

NOTES.

In determining the amount of compensation the Collector shall take into consideration the matters mentioned in ss. 23 and 24, one of which is the market value, at the time of awarding compensation, of the land. It is obvious that the offer of one rupee compensation is not in accordance with the duty of the Collector under these sections, and it would be altogether wrong to treat one rupee as the amount of compensation determined under this section, *Luchmeswar Singh* v. *Chairman of Durbhanga Municipality*, 18 Cal. 99 P. C.

Taking possession.

16. When the Collector has made an award under section 11, he may take possession of the land, which shall thereupon vest absolutely in the Government, free from all encumbrances.

Power to take possession.

NOTES.

Taking of Possession.—Ordinarily, possession of the acquired land can be taken after the award has been made. But in certain cases, a variation of this rule is permissible ; see the notes under sec. 17 *post*. As under sec. 48 the Government has the option of withdrawing from acquisition before possession is taken, great caution is to be exercised in the matter of taking possession.

If there is obstruction to the taking of possession by the Collector, secs. 183 and 186 of the I. P. C. will apply.

Where the compensation money granted to a person is recovered by the Government on its finding that it was not necessary to acquire the land, the Government becomes divested of the possession of the land, *Subramanian Asari* v. *Secretary of State*, 17 M. L. J. 557.

The Collector cannot acquire or give possession of any land beyond the boundaries given in the declaration. If he does so, he commits an act of trespass and is liable under the law of the country. He has to find out the precise quantity of land notified for acquisition within specified boundaries and if there was an erroneous boundary in the notification, the Judge or the Collector cannot cure the mistake, *Harish Chunder* v. *Secretary of State*, 11 C. W. N. 875.

Vest: Land acquired under the Act *vests* absolutely in the Government, free from all incumbrances, after a *bona-fide* award or reference by the Collector has been made and possession taken, even when no special notice, as required by s. 9 of the Act, has been served on persons known or believed to be interested therein, *Ganga Ram Marwari* v. *Secretary of State*, 30 Cal. 576. (*North London Ry. Co.* v. *Metropolitan Board of Works*, 28 L. J. Ch. 909; *Galloway* v. *Mayor Commonality of London*, L R. 1 H. L. 34, referred to). The interest of a monthly tenant on the land under acquisition comes to an end as soon as it vests in the Collector, under this section, *Bombay Municipality* v. *Damodar Bros.*, 60 I. C. 571.

Once the award is made and possession taken, mere non-service of notice under secs. 9 (3) and 45 will not prevent the vesting of property in Government, *Kasturi Pillai* v. *Municipal Council, Erode*, 53 I. C. 646 = 37 M. L. J. 618 = 10 L. W. 331 = 26 M. L. J. 268. *Cf. Musammat Shayahan Begam* v. *Secretary of State*, 36 I. C. 265.

If the public had any right of way over the land acquired, such right becomes extinguished after the acquisition. *In the matter of the petition of Fenwick*, 6 B. L. R., Ap. 47 : 14 W. R., Cr. 72.

The land acquired is taken discharged of all easements, and the loss of easements must be taken into account in assessing compensation for injurious affection, *Taylor* v. *Collector af Purnea*, 14 Cal., 423 (431). Though the encumbrance is extinguished, the lien attaches to the compensation money, see *Jatuni* v. *Amar Krishna*, 6 C. L. J. 745. Therefore, where pending a mortgage suit, the mortgage property is acquired under this Act, the mortgagee is entitled to an injunction restraining the mortgagor from taking the compensation money out of the Collector's hands, *Ashutosh* v. *Babu Lal*, 5 Pat. L. J. 650.

A right of way cannot continue to exist over land acquired for a Railway Company. If, however, the Railway Company by their representation

and conduct lay themselves under legal obligation to provide a way, such obligation may be enforced, *Collector of 24-Pergunnahs* v. *Nobin Chunder Ghose*, 3 W. R. 27.

Free from encumbrances :—Easements, rights of water, of way, drainage etc., are all encumbrances; see 14 Cal, 423. Leases and mortgages are also encumbrances. The mortgagee is a person interested within the meaning of sec. 9 and can apply for a share of the compensation money, *Basa Mal* v. *Tajammal*, 16 All., 78; see also 6 Mad, 344. As the mortgage lien attaches to the compensation money, the mortgage decree may be executed by attaching the compensation money, *Amar Chand* v. *Ram Sundar*, 13 C. W. N. 357, s. c. 1 I. C. 45.

After declaration has been issued for acquisition and possession taken by the Collector in pursuance thereof, the owner of the property cannot create a valid mortgage upon it. Therefore, in such a case there can be no such mortgage lien on the property as can be transferred to the compensation money; *Amar Chandra* v. *Ram Sunder*, 13 C. W. N 357, s. c. 1 I. C. 45 (distinguishing *Jotoni Chowdhurani* v. *Amar Krishna*, 13 C. W. N. 350=1 I. C. 164). *Cf. Basa Mal* v. *Tajammal*, 16 All., 78; *Viraraghava* v. *Krishnaswami*, 6 Mad. 344. For *contra Sajjadi Begam* v. *Janki Bibi*, 42 I. C. 793=20 O. C. 256. When a tenant's land is diminished by reason of an acquisition under this Act, the tenant is entitled to a proportionate reduction of rent, *Nagoor Rowthar* v. *Akbar Alisha*, 24 I. C. 724; also read the cases under Sec. 30 under the heading "Right of tenants to abatement."

Accrual of incumbrances after acquisition :—When in the notification of acquisition an obligation is undertaken by a Company to provide a way for the public, such obligation may be enforced, see *Collector of 24-Perganas* v. *Nobin Chandra*, 3 W. R., 27. Under sec. 116 of the Bengal Tenancy Act, no occupancy right can be acquired in lands acquired under this Act for the Government or for any local authority or for any Company and remaining as their property. As to what may be *encumbrances*, see *Taylor* v. *Collector of Purneah*, 14 Cal., 423 (431).

Special powers in cases of urgency.

17. (1) In cases of urgency, whenever the Local Government so directs, the Collector, though no such award has been made, may, on the expiration of fifteen days from the publication of the notice mentioned in section 9, sub-section (1), take possession of any waste or arable land needed for public purposes or for a Company. Such land shall thereupon vest absolutely in the Government, free from all encumbrances.

(2) Whenever, owing to any sudden change in the channel of any navigable river or other unforeseen emergency, it becomes necessary for any Railway Administration to acquire the immediate possession of any land for the maintenance of their traffic or for the purpose of making thereon a river-side or ghat station, or of providing convenient connection with or access to any such station, the Collector may, immediately after the publication of the notice mentioned in sub-section (1) and with the previous sanction of the Local Government, enter upon and take possession of such land, which shall thereupon vest absolutely in the Government, free from all encumbrances :

Provided that the Collector shall not take possession of any building or part of a building under this sub-section without giving to the occupier thereof, at least forty-eight hours' notice of his intention so to do, or such longer notice as may be reasonably sufficient to enable such occupier to remove his moveable property from such building without unnecessary inconvenience.

(3) In every case under either of the preceding sub-sections, the Collector shall at the time of taking possession offer to the persons interested compensation for the standing crops and trees (if any) on such land and for any other damage sustained by them caused by such sudden dispossession and not excepted in section 24 ; and, in case such offer is not accepted, the value of such crops and trees and the amount of such other damage shall be allowed for, in awarding compensation for the land under the provisions herein contained.

NOTES.

This section provides for taking of possession in cases of urgency. In all cases of urgency the Collector is empowered to take possession of any *waste* or *arable* land, although no award under sec. 11 has been made; but before taking possession he must obtain the previous sanction of Government for immediate occupation and clear 15 days must expire from the date of the publication of the general notice under sec. 9 (1). The nature of the urgency is not herein indicated. The Government is to determine that and its opinion on the point seems to be final. Under cl. (1) the Collector can take immediate possession of only *waste* or *arable* land; but under cl. (2) there is no restriction as to the nature of land; the Collector cannot however take immediate possession of any building without giving the occupier thereof at least 48 hours' notice of his intention. When immediate possession of any land is taken by the Collector under either of the two clauses, he shall at the time of taking possession, offer compensation for the standing crops and trees and for any other damage caused by such sudden dispossession: See *Mahommad Siddique* v. *Secretary of State*, 8 O. C. 118. The remedy of a person refusing to accept the Collector's offer lies in a reference to the Court and not by a civil suit. Where the Collector fails to perform his statutory duty, a separate suit will lie, *Manthara Vadi*, v. *Secretary of State*, 27 Mad. 535, s. c. 14 M. L. J. 173. As to the time of accrual of cause of action and limitation of such a suit see *Ibid*; also *James Hills* v. *Magistrate of Nudea* 11 W. R. 1.

Secs. 35 and 36 provide for temporary occupation of land in cases in which such occupation is needed without any permanent acquistion.

"We may explain in answer to a criticism by the Board of Revenue, L. P., that power has been given to the Collector in sec. 17 to give special damages for sudden dispossession to cover injuries which sudden dispossession constantly entail. If, for instance, an owner is suddenly deprived of a pasture meadow, the market value of the meadow may not represent the actual amount of his loss. It may be impossible to find fresh pasture for his cattle in the emergency except at special charges. We think it right that the Collector should be empowered whenever he deprives a man suddenly of his land, to meet liberally the exceptional expenses to which the owner may be put." *See the Report of the Select Committee, dated 23rd March 1893.*

PART III.

REFERENCE TO COURT AND PROCEDURE THEREON.

Reference to Court.

18. (1) Any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court, whether his objection be to the measurenent of the land, the amount of the compensation, the persons to whom it is payable, or the apportionment of the compensation among the persons interested.

(2) The application shail state the grounds on which objection to the award is taken :

Provided that every such app'ication shall be made,—

(*a*) if the person making it, was present or represented before the Collector at the time when he made his award, within six weeks from the date of the Collector's award ;

(*b*) in other cases, within six weeks of the receipt of the notice from the Collector under section 12, sub-section (2), or within six months from the date of the Collector's award, whichever period shall first expire.

NOTES.

Definitions :—For definitions of "Collector," "Court" etc. see Sec. 3 *ante*. For the meaning of the terms "written" and "month" see Sec. 3, clauses (58) and (33) respectively of the General Clauses Act (Act X of 1897).

Person interested : See notes under Sec. 3 (b) at p. 9 *ante*. This expression in Sub-Sec. (1) includes a person claiming an interest in the compensation, *Parameswara* v. *L. A. Collector, Palghat*, 42 Mad.,

231=36 M. L. J. 95=49 I. C. 659. A person setting himself up as a real landlord and alleging that compensation money has been paid to a wrong landlord is a person interested, *Rani Hemanta Kumari* v. *Hari Charan*, 5 C. L. J. 301.

Reference : Any person interested who has not accepted the Collector's award may by a written application require the Collector to make a reference to the Court for the determination of the following matters :—(1) the measurement of the land ; (2) the amount of the compensation ; (3) the persons to whom it is payable ; and (4) the apportionment of the compensation among the persons interested. The application shall state the grounds on which objection to the award is taken, and every such application shall be made within the period prescribed by cl. (2) of this section. Acceptance of payment of compensation under *protest* does not amount to *acceptance* of the award ; see Sec 31 (2) *post.* Omission to adduce evidence or withdrawal of money by claimant's mortgagee does not imply an *acceptance* of the award, *Gangadas* v. *Haji Ali*, 18 Bom. L. R. 826=36 I. C. 433. Before making a reference under this section, the Collector has to deposit the amount of compensation in the Court to which the reference is to be forwarded : see Sec. 31 (1). If, however compensation is paid to a wrong party, the successful party can compel refund of the money through the L. A. Court and he need not resort to a fresh suit for that purpose, *Satish Chandra* v. *Ananda Gopal*, 20 C. W. N. 816. Wrongful withdrawal of the compensation money from the Collector by a party does not debar the rightful party from asking for a reference under this section, *Ramhit Sahu* v. *Mahadeo Chaudhuri*, 56 I. C. 126 : 1 P. L. T. 148 : 2 U. P. L. R. (Pat.) 43 : (1920) Pat. 129.

The remedy of a person dissatisfied with the award is by a reference under this section and not by a suit for damages against the Secretary of State, *Jogesh Chandra* v. *Secretary of State*, 29 C. L. J. 53, s. c. 48 I. C. 702. Cf. *Secretary of State* v. *Qamar Ali*, 16 A. L. J. 669=51 I. C. 501. Also see *Amolak Shah* v. *Charan Das*, 17 I. C. 634, s. c. 16 P. W. R. 1913 : 52 P. R. 1913. If a man does not press his claim with respect to any part of the compensation before the L. A. Court, the matter will be concluded by *res judicata* and cannot be litigated afresh in a Civil Court, *Ranjit Sinha* v. *Sajjad Ahmad*, 32 I. C. 922 (Cal). The rule of *res judicata* will apply only with respect to the land which is actually the subject matter of the proceeding, but will not affect other parts of the claimant's property, *Digaj Deo* v. *Kali Charan*, 34 Cal., 466=11 C. W. N. 525. When a reference is made under this Section, the whole question including the mode of calculating compensation is re-opened, *Gangadhara* v. *Deputy Collector of Madras* 14 I. C. 270=22 M. L. J. 379=11 M. L. T. 327=(1912) M. W. N. 712. *Hugli Mills Co.* v. *Secretary of State*, 12 C. L. J. 489 (493). *Johnston* v. *Secretary of State*, 60 P. R. 1917, s. c. 42 I. C. 905. The L. A. Court is

bound to consider the question of the compensation awarded in its entirety, *Zia-uddin* v. *Secretary of State*, 54 I. C. 920.

The Collector has no power to make a reference to the Court, when he claims the land on behalf of the Government or of a Municipality, and denies the title of other claimants, and the Judge has no jurisdiction to entertain or determine such a reference, *Imdad Ali* v. *Collector of Farakhabad*, 7 All. 817 : Followed in *The Crown Breweries, Mussoorie* v. *Collector of Dehra Dun*, 19 All. 339. The principle of these cases should be limited only to those cases where the Government or the Municipality is the full owner and no other person has any sort of right in the land, so that there is nothing to be acquired. But where the Municipality or the Government has only a restricted right, the matter stands on a different footing. "There is nothing to limit the scope of the Act so as to exclude from its operation all cases in which a Municipality or other local authority for whose ultimate benefit the Government may take action, happens to have some interest in the land to be acquired, *Babujan* v. *Secretary of State*, 4 C. L J. 256. Where the Government is partly interested in a land it is not to be supposed that it is by reason thereof debarred from acquiring the outstanding interests of private persons, *Government of Bombay* v. *Esufali Salebhai*, 34 Bom., 618 : 12 Bom. L. R. 34 : 5 I. C. 621 ; *Mangaldas* v. *Asst. Collector of Ahmedabad*, 23 Bom. L. R. 148.

The mere fact that the compensation money awarded under the Act has been paid out to a party does not oust the jurisdiction of the Court to entertain a reference duly made under section 18. If the compensation money is paid to a wrong party, the Court has inherent power to recall it and to issue execution if the money wrongly taken out be not refunded, *Jogesh Chandra* v. *Yakub Ali*, 17 C. W. N. 1057, s. c. 21 I. C. 111.

Nature of proceedings under this Part : Proceedings under Part III of this Act are not by way of appeal, and what is contemplated is a new enquiry by the District Judge. It cannot be said that because a referring party adduces no evidence before the Court, he is precluded from asking the Court for a modification of the award made by the Collector, although his inability to adduce evidence before the judge is a matter to be taken into consideration in determining whether the award of the Collector should be disturbed, *Sri Raja Bommadevara* v. *Atmuri*, 31 Mad. 395=10 M. L. T. 349. (1911) 2 M. W. N. 401=12 I. C. 436=25 M. L. J. 17. It is not expected of the Court that it should ascertain the compensation with mathematical accuracy. The Court has simply to see whether the evidence adduced displaces the amount awarded by the Collector, *Higgins* v. *Secretary of State*, 22 C. W. N. 659=46 I. C. 221. The Court of the Land Acquisition Judge is a court of special jurisdiction, the powers and duties of which are defined by the statute ; such a Court cannot be invited to assume jurisdiction over matters not intended by the Legislature

to be comprehended within the scope of the enquiry before it, *British India S. N. Co.* v. *Secretary of State*, 38 Cal., 230, s. c. 12 C. L. J. 505 : 15 C. W. N. 87 : 8 I. C. 107.

A L. A. Court has jurisdiction to determine a conflict of title between rival claimants, *Sm. Kalyani Dassi* v. *Braunfield*, 20 C. W. N. 1028=36 I. C 184.

The procedure prescribed by secs. 18 and 19 has been laid down in very clear terms and must be strictly observed, *Secretary of State* v. *Hakim*, 64 P. R. 1914=244 P. L R. 1914=158 P. W, R. 1914.

An award made under Part III of the Act is neither a decree nor an order within the meaning of Sec. 14 of the Lower Burma Courts Act. Therefore no appeal lies against an award made by a single judge of the Burma Chief Court, *Collector of Rangoon* v. *Chandrama*, 28 I. C. 260.

The Act provides for two classes of references to the Judge, and the Judge can decide only those things which arise out of those references. The first class of reference is award of compensation under sec. 18 ; and the second class of reference is for the apportionment of the compensation under sec. 30. The result is that the Court has power under proper references to decide what compensation shall be awarded and to whom it shall be paid, *Taylor* v. *Collector of Purnea*, 14 Cal., 423. The scope of the reference under sec. 18 is very limited. The question of the legality of the acquisition does not form the subject of enquiry by the L. A. Judge. The questions for determination in a reference are those relating to valuation to apportionment and to other matters of a like nature. *Roghunath* v. *Collector of Dacca*, 11 C. L. J. 612, s. c. 6 I. C. 457. The Court is restricted to an examination of the question which has been actually referred and the scope of enquiry cannot be enlarged at the instance of parties who have not obtained any order of reference, *Bejoy Chand Mahatap* v. *P. K. Mazumdar*, 13 C. L. J. 159=9 I. C. 582. No question for which the objector has not asked the Collector to make a reference, can be raised in the Civil Court, *Hafiz Anwar Ali* v. *Ram Sarup*, 24 I. C. 903=81 P. W. R. 1914=180 P. L. R. 1914 ; *British India S. N. Co.* v. *Secretary of State*, 38 Cal. 230=12 C. L. J. 505=15 C. W. N. 87=8 I. C. 107. Thus where a reference is made at the instance of the landlord in a case of apportionment between him and his tenant, the latter cannot claim a variation of the Collector's award in his favour, *Maharali* v. *Mushtak Singh*, 25 I. C. 803=8 S. L. R. 18. Therefore, where a reference is made at the instance of the landlord, there can be an enhancement of the award *only* in respect of the landlord's share ; the whole award re-presenting the landlord's and tenant's interests cannot be enhanced, *Secretary of State* v. *Manohar Mukherji*, 23 C. W. N. 720=53 I. C. 238 Similarly, where the landlord's and tenant's interests are separately assessed by the Collector, the landlord cannot claim any enhancement

without making the Collector a party, *Brojendra Mohan* v. *Ram Narain*, (1917) Pat. 127, s. c. 42 I. C. 787. The Court has no jurisdiction to deal with objections except those which are made by persons who were parties to proceedings before the Collector or who have since within 6 months applied to the Collector to make a supplementary reference in their case, *Mahananda Roy* v. *Sirish Chandra*, 7 I. C. 10 : Cf. *Secretary of State* v. *Hakim*, 64 P. R. 1914=244 P. L. R. 1914=158. P. W. R. 1914=25 I. C. 448.

The ordinary rule is that a party who had raised no objection to the apportionment of compensation made by the Collector must be taken to have accepted the award in that respect and such person is not entitled to have the award varied upon a reference at the instance of another party; but this rule is inapplicable to a case where the scope and object of reference is not to settle the question of apportionment as between the referring and non-referring claimants but merely to obtain a final benefit for both, *Bejoy Chand Mahatap* v. *P. K Mozumdar*, 13 C L. J. 159=9 I. C. 582.

Formalities for making a Reference: Sec. 18 of the Land Acquisition Act provides that *any person interested*, who not having accepted the award, desires to have an adjudication of his claim by the Court should, within the period of limitation prescribed in the proviso to the section, do certain things : first, he must make written application to the Collector ; secondly, that written application should require the Collector to refer the matter for the determination of the Court, whether his objection be to the measurement of the land, the amount of the compensation, the persons to whom it is payable or the apportionment of the compensation among the persons interested ; and, thirdly, that such application shall state the grounds (though not in details) on which the objection to the award is taken. These formalities are matters of substance, and their observance is a condition precedent to the Collector's power of reference. The word 'notice' as used in cl. (b) of the proviso to sec. 18 of the Land Acquisition Act, means notice, whether immediate or not. The clause prescribes one of two periods of limitation for a party who has accepted the Collector's award, either six weeks from the date of the receipt of the Collector's notice, whether immediate or not, or six months from the date of the receipt of the award, whichever shall first expire. These last words show that the element of notice is an essential ingredient, so to say, of the two alternative periods whether such notice be immediate or not, *In re Land Acquisition Act*, 30 Bom. 275: 7 Bom. L. R. 697. (32 Cal., 605 P. C.: 7 Bom. L. R. 422, referred to ; 12 Bom. 276, followed).

Grounds of objection should be set out in the petition though details need not be given. There is nothing in the L. A. Act which

requires a claimant to state the grounds in detail upon which, in applying for a reference under section 18 of the Act, he claims a larger sum than that awarded by the Collector, *Mahananda Pal* v. *Secretary of state*, 24 C. W. N. 716 : 58 I. C. 631. When an owner says in his application, "I object to the award of the Collector, and I wish a reference to be made to the Court" and then adds in connection with certain items that the compensation paid for the different heads is too low, it has been *held* that the application *does give grounds* for the reference ; *Secretary of state* v. *Jiwan Bakhsh*, 36 I. C. 213=67 P. R. 1916.

A petition asking for a reference to Court, under sec. 18 of the L. A. Act, was sent by post to the Collector. The Collector received the petition, and, being apparently satisfied that it was the genuine petition of the applicant, in whose name it was written, referred the case to the Court as prayed. The District Judge, however, refused to adjudicate upon the matter referred, on the ground that the application, which had been sent by post to the Collector, was not properly presented. *Held*, that the District Judge had failed to exercise a jurisdiction vested in him by law, *Shiva Sundari Dassi* v. *The Collector of Cawnpore*, A. W N. (1905), 220 : 2 A. L. J. 784.

Scope of Enquiry : In a reference exception may be taken to (*a*) measurement, (*b*) the amount of compensation, (*c*) the right of a conflicting claimant or (*d*) apportionment. When a question of ascertainment of the amount of compensation is involved the Secretary of state is directly interested and no proceeding upon a reference can be valid in his absence, *Municipal Corporation of Pabna* v. *Jogendra Narain*, 13 C. W. N. 116. In a proceeding under the Land Acquisition Act, a party who had raised no objection to the apportionment of compensation by the Collector must be taken to have accepted the award in that respect. Under secs. 18, 20 and 21, all that the Court can deal with, is the objection which has been referred to it ; it cannot go into a question raised for the first time by a party who had not referred any question or objection to it under sec. 18 of the Act, *Abu Bakar* v. *Peary Mohan*, 34 Cal. 451 ; *Gobinda* v. *Debendra*, 12 C. W. N. 98. A Court has no jurisdiction to deal with objections except those which were made by persons who were parties to the proceedings before the Collector and which brought about the reference, *Mahammad Safi* v. *Haran Chandra*, 12 C. W. N. 985 ; *Prabalchandra* v. *Raja Peari Mohun*, 12 C. W. N. 987 ; *Mahananda Roy* v. *Srish Chandra*, 7 I. C. 10. In hearing a reference, the Court should limit its scope of enquiry to the objections against the Collector's award, *Abu Bakar* v. *Peary Mohan*, 34 Cal. 451. So where reference is made with respect to the question of the amount of compensation, there need not be any enquiry as to the interest of the claimant, *J. C. Galstaun* v. *Secretary of*

State, 10 C. W. N. 195. Where a claimant fails to prove the value of the land at the rate or upon the principle claimed by him, the Judge is not bound to accept the award, but it is his duty, having regard to all the evidence and to all the circumstances of the case, himself to determine what is the fair compensation for the land acquired, *Hughli Mills Co.* v. *Secretary of State*, 12 C. L. J. 489. But see *In the matter of Rustomji Jijibhoy*, 30 Bom. 341 : 7 Bom. L. R. 881, where it has been held that sec. 18, sub-sec. (2) of the Act requires that any person interested, who, not having accepted the Collector's award, requires the Collector to make a reference to the Court, "shall state the grounds on which objection to the award is taken." Such requirement is one of the conditions precedent to the obligation of the Collector to make the reference. But, there is no express provision in the Act, which expressly lays down that the Court in hearing the reference should confine itself to the grounds of objection set forth by the claimant in his written application to the Collector.

Under the provisions of secs. 3 and 18 of this Act, the person having a claim as landlord, conflicting with the claim of the person to whom the compensation has been awarded and who alleges that the person to whom the compensation has been awarded is not the real landlord of the land acquired, is entitled to ask for a reference to the Civil Court, and the Civil Court has jurisdiction to decide such a case, *Rani Hemanta Kumari* v. *Hari Charan Guha*, 5 C. L. J. 301. (7 All. 817 : 7 Cal. 406 and 17 All. 573, referred to).

Any person interested : For definition of *person interested* see Sec. 3 (b) *ante* at p. 9. The expression includes all persons *claiming* an interest in the compensation, see *Parameswara* v. *Land Acquisition Collector, Palghat*, 42 Mad. 231, s. c. 36 M. L. J. 95=49 I. C. 659. It does not include the Secretary of State, *British India Steam Navigation Co.* v. *Secretary of State*, 38 Cal. 230, s. c. 12 C. L. J. 505 : 15 C. W. N. 87 : 8 I. C. 107. See also 7 All. 817 ; 19 All. 339. The Land Acquisition Act does not contemplate or provide for the acquisition of any interest which already belongs to Government, *Deputy Collector, Calicut Division* v. *Aiyavu Pillay*, (1911) 2 M. W. N. 367=9 M. L. T. 272=9 I. C. 341. Neither can the Government, nor a Company for whose benefit land is acquired claim a reference, *Ezra* v. *Secretary of State*, 30 Cal., 36, s. c. 7 C. W. N. 249 ; *Municipal Corporation of Pabna* v. *Jogendra*, 13 C. W. N. 116. Cf. Sec. 50 (Proviso) below. Any person having interest but not present or represented before the Collector, may also claim reference. See *Abu Bakar* v. *Peary Mohan Mukherji*, 34 Cal. 451. A person who asserts himself to be the real landlord in opposition to the landlord appearing before the Collector, is entitled to claim a reference ; *Rani Hemanta Kumari* v. *Hari Charan Guha*, 5 C. L. J. 301.

A person who enters into a contract with the owner of land previous to the declaration of the acquisition, but whose purchase is completed subsequent to the award and reference by the Collector, is a person who has an interest in the compensation money, and is entitled to ask for a reference on the ground that the amount awarded was insufficient and to appear in support of it, *J. C. Gaulstaun* v. *Secretary of State*, 10 C. W. N. 195.

Effect of omission to apply for Reference: When an award has been made by the Collector but has not been followed by a reference to the Civil Court under sec. 18 of this Act, there has been no adjudication of the rights of the claimants *inter se*; and a claimant who appeared before the Collector when the award was made, but yet did not apply for a reference under sec. 18 of the Act, can maintain against any person who may have received the whole or a part of the consideration awarded, a civil suit to establish his own claims to such compensation under the last proviso of sub-sec. (2) of sec. 31 of the Land Acquisition Act. (I. L. R. 7 Cal. 388, followed). The provisions of sec. 33 of the Land Acquisition Act show that the limitation provided by proviso (*a*) sub-sec. (2) of sec. 18 of the Act is not intended to be an absolute limitation as to time; inasmuch as sec. 30 of the Act authorises the Collector of his own notice to make a reference to the Civil Court upon any question of disputed apportionment, *Srimati Punnaboti Devi* v. *Raja Pudmanund Singh*, 7 C. W. N. 538.

An objection as to the measurement of the land or the amount of the compensation payable therefor must be determined exclusively by a reference to the Civil Court under sec. 18, cl. (1). But a question, as to the persons to whom compensation is payable or its apportionment among the persons interested, may be determined either by a reference under sec. 18, cl. (1) or by a suit at the instance of a person lawfully entitled to it as against another. If a litigant has made his choice and availed himself of a reference to the Court under sec. 18, he cannot again ask for an opportunity to litigate the same matter in the ordinary Court. But where there has been no reference under this section, a suit would be maintainable for the adjudication of the rights of the claimants *inter se*. 7 Cal. 388; 7 C. W. N. 538 and 12 Cal. 33, referred to). When therefore a reference is made under sec. 18 and the application is dismissed for non-appearance of the applicants the provisions of sec. 102 and 103 will apply, *Bhandi Singh* v. *Ramadhin Rai*, 2 C. L. J. 359 : 10 C. W. N. 991. When a question about measurement is in dispute, compensation should be paid in respect of the excess area existing *in reality* and not merely appearing in the revenue records, *Johnston* v. *Secretary of State*, 60 P. R. 1917=42 I. C. 905.

MISCELLANEOUS.

The scope and the object of the Act is to provide a speedy method for

deciding the amount of the compensation payable by the Collector when such amount is disputed, and the person or persons to whom it is payable. Sec. 15 of Act X of 1870, (which corresponds with sec. 18 of the present Act), contemplates a reference where the question of the title to the land arises between the claimants who appear in response to the notice issued under sec. 9, and who set up conflicting claims one against another as to the land acquired, which the District Judge as between such persons can determine, *Imdad Ali Khan* v. *Collector of Farakhabad*, 7 All. 817.

A decision of the Court with respect to the apportionment of compensation money upon a reference cannot be treated as *res judicata* affecting other parts of the claimant's property held under the same title, *Disgaj Deo* v. *Kalicharan*, 34 Cal., 466=11 C. W. N. 525; see also the notes under sec. 30 *post*, under the heading "Effect of an Adjudication etc."

The failure of the Collector in making reference under sec. 18 to state the grounds on which the amount of compensation was determined as required by sec. 19, cl. (*d*), makes it incumbent on the Collector to justify the award before the Special Judge, *Harish Chunder* v. *Secretary of State*, 11 C. W. N. 875.

On a reference under this section the District Judge valued the compensation at Rs. 4,200 and the amount was placed in deposit with the Collector. One H, then applied for payment of the amount to him and the application was opposed by others claiming the compensation money. The District Judge dismissed the application directing the petitioner to seek remedy in a civil suit. *Held*, that the order of the District Judge was wrong; he ought to have apportioned the amount of compensation under sec. 30 of the Land Acquisition Act. *Held*, that the court fee payable on the appeal was Rs. 2 only and not on the amount in deposit with the Collector, *Harish Chandra* v. *Bhaba Tarini*, 8 C. W. N. 321.

An award written or signed by the Collector without being made in the presence of or communicated to the applicant is *qua* the applicant no award at all, and the period of limitation for filing an objection to the award can only be computed from the date when the award is made within the applicant's knowledge, *Haridas* v. *Municipal Board, Lucknow*, 16 O. C. 374=22 I. C. 652 :

The Collector's authority to make the reference as an agent of Government is restricted by the statutory conditions prescribed in S. 18. He cannot bind Government by stepping outside the limits of the power given by S. 18. So the Collector cannot make a reference to the Court on a time-barred application, and if he inadvertently does so, his action cannot bind Government which is the real party to the proceeding, or oblige the Court to accept the reference, *Collector of Akola* v. *Anand Rao*, 7 N. L. R. 88=11 I. C. 690.

Proviso: Time-limit for an application for Reference: Such an application should be made (a) within *six weeks* from the date of the Collector's award, if the applicant was present (personally or by agent) at the time of the award, otherwise (b) within *six weeks* of the receipt of notice under sec. 12(2) or within *six months* from the date of the award, whichever period shall first expire. The words "shall first expire" show that the element of notice is an essential ingredient of the two alternative periods of limitation prescribed in the clause, *In re Land Acquisition Act*, 7 Bom. L. R. 697. In order to bring a case within clause (a) it must be shown that the party was present at the time of the award, either personally or by agent. So where before the date of the award, the Collector having passed an order that the party should go to the Civil Court, the Muktear of the party ceased to take any further part in the proceedings before the Collector and a reference was made more than six weeks *after* but *within six* months of the award, the Court held that the reference was within time under sec. 18(2) (b), *Mahendra Chandra* v. *Abhoy Charan*, 40 I. C. 355. The time spent in obtaining a copy of the Collector's award cannot be excluded from the period of six weeks, if the party dissatisfied with the award was present when it was made, *Collector* of *Akola* v. *Anand Rao*, 7 N. L. R. 88=11 I. C. 690. As actual payment of the compensation money is not necessary for the completion of the award, therefore the six months' rule of limitation should not be calculated from such payment, *Miran Baksh* v. *Firoze Din*, 17 I. C. 395=232 P. L. R. 1912.

If the Collector overlooks the fact that an application for reference is time-barred and makes the reference, it will not mean that the Collector waived the question of limitation and neither can it bind the Government, *Ghulam Mohyuddin* v. *Secretary of State*, 48 P. R. 1914=208 P. L. R. 1914 =149 P. W. R. 1914=24 I. C. 379.

Section 12 of the Limitation Act XV of 1877 does not apply in computing the period of limitation for an application under sec. 18(1) of the Land Acquistion Act I of 1894; the time requisite for obtaining a copy of the award cannot be deducted, *Har Jas* v. *Harditta*, 79 P. R. 1904. This is so especially when the party dissatisfied with the award was present when it was made, *Collector of Akola* v. *Anand Rao*, 7 N. L. R. 88= 11 I. C. 690. Likewise, there can be no extension of time under this section on the ground of minority, *Secretary of State* v. *Hakim*, 64 P. R. 1914=244 P. L. R. 1914=158 P. W. R. 1914=25 I. C. 448.

Refusal to make reference is a judicial order: A Collector, making a reference or refusing to make a reference, is acting judicially and therefore his proceedings are subject to revision by the High Court, *Secretary of State* v. *Jiwan Baksh*, 36 I. C. 213=67 P. R. 1916. *Administrator General of Bengal* v. *L. A. Collector, 24 Pergannas*

12 C. W. N. 241 ; *Krishna Das Roy* v. *Collector of Pabna*, 16 C. L. J. 165=16 C. W. N. 327=13 I. C. 470. *Parmeshwar* v. *L. A. Collector, Palghat*, 42 Mad. 931=36 M. L. J. 95=49 I. C. 659. Also see the other cases cited at p. 30 *ante*. For *Contra* see *Rafiuddin* v. *Secretary of State*, 31 I. C. 76, s. c. 65 P. R. 1915=144 P. W. R. 1915. According to some view, the proceedings before the Collector being simply administrative and not judicial the Collector is not amenable to the revisional jurisdiction of the High Court ; but a *mandamus* may, however, issue in a proper case directing him to do a particular act, *Best & Co. Ltd.* v. *Deputy Collector of Madras*, 36 I. C. 621, s. c. (1916) 2 M. W. N. 348 : 20 M. L. T. 388 : 4 L. W. 535.

Collector's Award when complete : The Collector's award is complete as soon as he apportioned the amount of compensation among the respective claimants : the actual payment of the compensation money to the claimants was not necessary to the completion of the Collector's award; therefore the date of such payment is immaterial in the matter of computing the period of limitation under S. 18 (*b*) of the Act, *Miran Baksh* v. *Feroze Din*, 14 I. C 537=203 P. W. R. 1912=232 P. L. R. 1912=17 I. C. 395.

Collector's statement to the Court.

19. (1) In making the reference, the Collector shall state, for the information of the Court, in writing under his hand,—

(*a*) the situation and extent of the land, with particulars of any trees, buildings or standing crops thereon ;

(*b*) the names of the persons whom he has reason to think interested in such land ;

(*c*) the amount awarded for damages and paid or tendered under sections 5 and 17, or either of them, and the amount of compensation awarded under section 11 ; and,

(*d*) if the objection be to the amount of the compensation, the grounds on which the amount of compensation was determined.

(2) To the said statement shall be attached a

schedule giving the particulars of the notices served upon, and of the statements in writing made or delivered by, the parties interested respectively.

NOTES.

"The new sub-section (2) we have added to sec. 19 will insure the submission by the Collector of an accurate and complete descriptive list of all the relevant papers which may be required by the Court." See *the Report of the Select Committee, dated 22nd March, 1893.*

A Collector in making a reference to a civil Court should state the grounds on which the amount of compensation was determined; clause (d) of sec. 19 operates as a safeguard against any arbitrary award being made. On a proper reference being made, the burden of proving that the compensation awarded is inadequate, rests with the claimant. ***Madhusudan Das*** v. ***Collector of Cuttack***, 6 C. W. N. 406. The provisions of this section should be strictly complied with; a reference not in accordance with the section makes it incumbent on the Collector to justify the award before the Special Judge, ***Harish Chunder*** v. ***Secretary of State***, 11 C. W. N. 875. Particulars as to trees buildings etc. on the land should be included in the award, ***Sub-Collector of Godavari*** v. ***Seragam Subravayodu***, 30 Mad. 151.

A reference to the civil Court under sec. 19 of the Land Acquisition Act can be made subsequent to the award of the Collector under sec. 151 of the Central Provinces Land Revenue Act (XVI of 1889), ***Govind Rao Badkas*** v. ***Collector of Nagpur***, 2 N. L. R. 172. The Collector should try to consolidate claims to compensation as far as possible, ***Fink*** v. ***Secretary of State***, 34 Cal. 599.

The Collector making the reference and the presiding officer of the Court hearing it must not be one and the same person, ***Khuman*** v. ***Collector of Raipur***, 11 C. P. L. R. 25.

Service of notice.

20. The Court shall thereupon cause a notice, specifying the day on which the Court will proceed to determine the objection, and directing their appearance before the Court on that day, to be served on the following persons, namely :—

(*a*) the applicant;

(*b*) all persons interested in the objection, except such (if any) of them as have consented

without protest to receive payment of the compensation awarded ; and,

(*c*) if the objection is in regard to the area of the land or to the amount of the compensation, the Collector.

NOTES.

The language of the section is faulty as there may be persons who though consenting to receive payment without protest may be adversely affected by the decision of the Court. For instance, when payment to a party is withheld under section 31 at the instance of a rival claimant, such party is not entitled to get notice under cl. (b). It should however be noticed that this section does not debar such a party from appearing at the hearing.

In a proceeding under the Land Acquisition Act, a party who had raised no objection to the apportionment of compensation made by the Collector must be taken to have accepted the award in that respect. Under secs. 18, 20 and 21 of the Land Acquisition Act all that the Court can deal with, is the objection which has been referred to it ; it cannot go into a question raised for the first time by a party who had not referred any question or any objection to it under sec. 18, *Abu Bakar* v. *Peari Mohun*, 34 Cal., 451. But see *In the matter of Rustomji Jijibhoy*, 30 Bom. 341 : 7 Bom. L. R. 831. In *determining* the objection, the judge must decide according to weight of evidence irrespective of the question of *onus probandi*, and without throwing on the claimant an undue share of it, *Fink* v. *Secretary of State*, 31 Cal , 599 (606).

Instances are not uncommon when the Collector has not given the grounds on which the amount of compensation was determined by him, and the legal result of his failure to comply with the provisions of sec. 19, cl. (d) of the Act is to make it incumbent on the Collector to justify before the Special Judge, an award which is a mere *brutum fulmen*, *Harish Chunder* v. *The Secretary of State*, 11 C. W. N. 875.

Where in a compensation case before the Land Acquisition Court neither of the assessors nor the pleader for the appellant appear on the day fixed for hearing, the Judge should not proceed with the case in their absence by confirming the Collector's award, but should give notice to the parties, *Kamini Dasi* v. *Secretary of State*, 17 Cal., 380.

Where a question as to the area of the acquired land or the amount of compensation is involved, notice should be given to the Collector, *Municipal Corporation of Pabna*. v. *Jogendra*, 13 C. W. N. 116.

21. The scope of the enquiry in every such proceeding shall be restricted to a consideration of the interests of the persons affected by the objection.

Restriction on scope of proceedings.

NOTES.

Under secs. 18, 20 and 21 of the Land Acquisition Act all that the Court can deal with is the objection which has been referred to it; it can not go in to a question raised for the first time by a party who had not referred any question or any objection to it under sec. 18. *Abu Bakar* v. *Peary Mohun*, 34 Cal. 451. See also *Gobinda Kumar Roy* v. *Debendra Kumar*, 12 C. W. N. 98; *Mohammad Shafi* v. *Haran Chandra*, 12 C. W. N. 935; *Prabal Chandra* v. *Raja Peari Mohun*, 12 C. W. N 987; also see 38 Cal., 239. But see *In the matter of Rustomji Jijbhoy*, 30 Bom. 341. 7 Bom. L R. 881. The Court would be slow to differ from the Collector's offer over a matter of a few rupees except for very strong reasons, such as an error on a question of principle, *Government of Bombay* v. *Karim Tar Mahomed*, 33 Bom, 325, s. c. 10 Bom. L. R. 660.

Section 21 of the Act authorises the Judge to confine his enquiry into valuation to the interests of persons affected by the Collector's reference under sec. 18, but the section must mean the admitted interests. If there is any dispute as to the relative value of such interests, the Judge should determine the total amount payable for the land leaving the question of apportionment to be decided in a separate proceeding. The determination of the value of individual interest as contemplated in sec. 21 exclusive of the interests of other claimants to compensation, is possible only in a case where such interest is incapable of variation in a proceeding for apportionment, *Fink* v. *Secretary of State*, 34 Cal., 599. Cf. 4 C. L. J. 256.

Where there are several references in which the parties are the same, the evidence is the same, and the plots of lands are contiguous to one another and form part of one estate, although in the occupation of different tenants, the cases may be consolidated and the court-fee may be paid upon the value of the consolidated cases and appeals. The provisions of the Civil Procedure Code do not preclude from making an order for consolidation, *Kashi Prosad Singh* v. *Secretary of State*, 29 Cal., 140.

In the interest of all persons concerned questions which arise as to the amount of compensation, should be dealt with, as far as possible at one and the same time, *Kishen Chand* v. *Jugannath Prasad*, 25 All. 133 = A. W. N. (1902), 215. Cf. *Harish Chandra* v. *Bhaba Tarini*, 8 C. W. N. 321.

Where a claimant objected to the amount of compensation offered by the Collector, but withdrew his objection before the District Judge,

who, however, allowed an increased amount at the instance of other claimants : *Held*, that the former did not disentitle himself from claiming the benefit of the increased amount awarded by the Judge, on the ground that he did not contest the award of the Collector, *Nobin Chunder* v. *Deputy Commissioner of Sylhet*, 1 C. W. N. 562, p. 564.

Where a reference is made to the Civil Court, the claimant is to be regarded as the plaintiff, and the Government as defendant ; the Collector should defend the case exactly as he would a Government suit ; and it is his duty to see that evidence is forthcoming to show the fairness of the amount, which he has given as compensation. The Collector must be prepared with reliable evidence at the trial, *Ezra* v. *Secretary of State*, 30 Cal. 36, p. 83 : 7 C. W. N. 249.

The burden of proving that the compensation award is insufficient, rests on the claimant inasmuch as the Collector's award is *primâ facie* evidence of the sufficiency thereof, *Madhu Sudan Dass* v. *Collector of Cuttack*, 6 C. W. N. 406, p. 408.

Upon a reference the function of a Special Judge, is, ordinarily, apart from questions of apportionment among contesting claimants, merely to see whether the Collector's award is or is not adequate, *i. e*, the objectors have to show him that it is inadequate in amount and, in the absence of such proof the award of Collector stands, whatever Government may have pleaded and the fact that the objector's title to the property was attempted to be denied by the Government does not enable the Judge to decline jurisdiction to determine the reference, *Amolal Shah* v. *Collector of Lahore*, 115 P. R. 1906, (7 All. 817 ; 19 All. 339 and 30 Cal., 36, referred to).

Proceedings to be in open Court.

22. Every such proceeding shall take place in open Court, and all persons entitled to practise in any Civil Court in the province shall be entitled to appear, plead and act (as the case may be) in such proceeding.

NOTES.

The Code of Civil Procedure shall apply to all proceedings before the Court under this Act. See sec. 53, and *Bhandi Singh* v. *Ramadhin Rai*, 2 C. L. J. 359. *Naresh Ch. Bose* v. *Hira Lal Bose*, 43 Cal. 239=20 C. W. N. 360=34 I. C. 263. The position of the claimant is that of the plaintiff, *Ezra* v. *Secretary of State*, 30 Cal., 36 ; *Secretary of State*, v. *Baij Nath*, 12 C. W. N. cc (200). Rules of evidence should be those of ordinary civil suits ; so where certain sale-deeds for sums over Rs. 100 were tendered, the Courts refused to consider the same from want of

registration ; *Ma Shwe* v. *Collector of Myanaung*, 11 I C. 918. Just like ordinary Civil Courts, a L. A. Court has power to hold local inspection, *Secretary of State* v. *Charles Worth*, 26 Bom. 1. Evidence should be taken in *open Court*, and the evidence recorded by the Collector cannot be used unless assented to by the parties, *Macintyree* v. *Secretary of State*, 2 L. B. R. 208.

Burden of Proof: The *burden of proof* is ordinarily on the claimant in the Court of the Special Judge to prove that the valuation made by the Collector is insufficient. But the burden must vary according to the nature of the enquiry made by the Collector. If no evidence has been taken by the Collector and if no reasons have been given in his decision to support his conclusion, the claimant has a very light burden to discharge. The *ipse dixit* of a Collector has very little weight and is not *primá facie* evidence of the correctness of his award, *Har'sh Chunder* v. *Secretary of State*, 11 C. W. N. 875. Also see 6 C. W. N. 406 (403), *Marwadi Padmji* v. *Deputy Collector of Adoni*, 27 M. L. J. 106. See also under secs. 18 and 30 *ad loc.* For the application of the rule of *res judicata* see *Kanai Lal* v. *Rasik Lal*, 19 C. W. N. 361. Claimant's objection is to be decided according to evidence, *Fink* v. *Secretary of State*, 34 Cal. 599 (606).

For the persons who are entitled to practise in the Civil Courts see Order III, Rules 1 and 2, C. P. Code.

As for **pleaders' fees** in cases under Part III of the Land Acquisition Act I of 1894, see High Courts' Rules framed under clause (e) of sec. 27 of the Legal Practitioners' Act XVIII of 1879, to be found at pages 142 and 143, Chapter VI of H. C. Circular Order, Vol. I of 1903. The pleader's costs should be allowed on the difference between the amount claimed and the amount awarded, *Kanwar Ramzur* v. *Secretary of State*, 174 P. W. R. 1913=309 P. L. R. 19 3 =21 I. C. 270.

In the Punjab, pleader's fee is allowed at 5 p. c. on the difference between the award of the Collector and that of the Judge, *Ram Saran Das* v. *Collector of Lahore*, 9 I. C. 228=9 P. W. R. 1911. As to the rule of the Allahabad Courts, see *Kanhaiya Lal* v. *Secretary of State*, 14 I. C. 214. In districts to which the Oudh Civil Digest applies, pleader's fee will be taxed according to the provisions of r 9 of para. 272 of the said Digest, *Sajjad Ali Khan* v. *Secretary of State*, 17 O. C. 284=25 I. C. 732.

Costs: Costs in claims under L. A. Act should be calculated as in ordinary suits, *D. A. V. College Management and Trustsee Society* v. *Secretary of State*, 126 P. R. 1916.

Matters to be considered in determining compensation.

23. (1) In determining the amount of compensation to be awarded for land acquired under this Act, the Court shall take into consideration—

first, the market-value of the land at the date of the publication of the declaration relating thereto under section 6 ;

secondly, the damage sustained by the person interested, by reason of the taking of any standing crops or trees which may be on the land at the time of the Collector's taking possession thereof ;

thirdly, the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of severing such land from his other land ;

fourthly, the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of the acquisition injuriously affecting his other property, moveable or immoveable, in any other manner, or his earnings ;

fifthly, if, in consequence of the acquisition of the land by the Collector, the person interested is compelled to change his residence or place of business, the reasonable expenses (if any) incidental to such change ; and

sixthly, the damage (if any) *bona fide* resulting from diminution of the profits of the land between the time of the publication of the declaration under section 6 and the time of the Collector's taking possession of the land.

(2) In addition to the market-value of the land, as above provided, the Court shall in every case award a sum of fifteen per centum on such market-value, in consideration of the compulsory nature of the acquisition.

NOTES.

Nature of reference and power of the Judge: The Land Acquisition Act provides for two classes of reference to the Judge; one, to assess compensation and the other to apportion compensation. The power of the District Court is limited to the determination of these questions and questions of title incidental thereto, *Taylor* v. *Collector of Purnea*, I. L. R. 14 Cal., 423. In the valuation cases, the Secretary of State must be impleaded as a party defendant. The local authorities or the companies on whose behalf the acquisition is made need not be brought on the record. See notes under Sec 22 *ante* at pp. 54-55. Cf. *Municipal Corporation of Pabna* v. *Jogendra Narain*, 13 C. W. N. 116. In appeals from these cases, likewise, the only person who can be impleaded as a respondent is the Secretary of State. So where the Secretary of State is not impleaded in the memorandum of appeal within the period of limitation for the appeal, it will be barred by time, *Fakir Chand* v. *Municipal Committee of Hazro*, 59 P. L. R. 1913=88 P. W. R. 1913=59 P. R.=1913=18 I. C. 37.

The Court of the Land Acquisition Judge is a Court of Special jurisdiction, the powers and duties of which are defined by the statute, and a Court of this description cannot be legitimately invited to exercise inherent powers, so as to assume jurisdiction over matters not intended by the Legislature to be comprehended within the scope of the enquiry before it. Such a Court has no jurisdiction to review the award of the Collector and to examine if it is according to law and if in contravention of the law, to direct him to re-cast, modify and reduce it, *British Indian Steam Navigation Co.* v. *Secretary of State*, 38 Cal., 230 (244), s. c. 12 C. L. J. 505=15 C. W. N. 87=8 I. C. 107. The Land Acquisition Judge is entitled to investigate the propriety of the award of the Collector in so far as it is impeached by the claimants; but he cannot, at the instance of the Secretary of State, include in this investigation the question of the propriety of that portion of the award with which the claimants are satisfied and for the examination of which they have not obtained a reference to the Court, *Secretary of State* v. *British Indian Steam Navigation Co.*, 13 C. L. J., 90 (98). Under sec. 53 (*vide post*) of the Act, the L. A. Court is governed by the provisions of the C. P. Code and has the powers of Judge under the Code, *Naresh Ch. Bose* v. *Hira Lal Bose*, 43 Cal. 239,

Section 23 of the Act renders it compulsory for a judge to take into consideration certain matters there referred to, and to allow compensation for such of them as are admitted, or as he finds on the evidence before him to exist, *Shwe Gaung* v. *The Collector*, 4 L. B. R. 71. In ascertaining the market value, the Court shall look upon the land as if all the separate interests have combined to render the land available for sale in the market, *Jalbhoy Ardesir Sett* v. *Secretary of State*, 10 Bom. L. R. 931. The method contemplated by the L. A. Act is to ascertain, first, the market value of the land on the footing that all separate interests combined to self; and, then, to apportion or distribute the sum among the various persons found to be interested, *Bombay Improvement Trust* v. *Jalbhoy Ardeshir Set*, 33 Bom., 483=Bom. L. R. 674. Where the market value of the land has to be ascertained under this section, the Court must proceed upon the assumption that it is the particular piece of land in question that has to be valued including all interests in it, *Collector of Belgaum* v. *Bhimrao Patel*, 10 Bom. L R. 657. The intention of sec. 23 taken as a whole is to provide complete indemnity to the owner of the land acquired. The sub-clauses give effect to this principle by enumerating the heads under which compensation may be awarded, *Baroda Prasad* v. *Secretary of State*, 25 C. W. N. 677.

Evidence and Relevancy: Instances of sales of lands in the vicinity are not relevant, unless these lands and the land under acquisition are similarly circumstanced and situated, *Kanwar Ramzur* v. *Secretary of State*, 21 I. C. 270=174 P. W. R. [illegible]3.

Onus of Proof: The onus of proving the value of land acquired lies upon the claimant; and to establish the value and selling prices of neighbouring places, it is necessary for him to adduce evidence of numerous or at least sufficiently numerous instances of sales of land in similar conditions and used for similar purposes in the neighbourhood, *Biswa Ranjan* v. *Secretary of State*, 11 I. C. 62 (Cal.); *Hughli Mills Co.* v. *Secretary of State*, 12 C. L. J. 489. It is always for the claimant to show that the amount awarded is calculated on a wrong basis; but where the Collector makes the award without taking any evidence, the burden becomes very light. The mere *ipse dixit* of a Collector has very little weight and is not *primo facie* evidence of the correctness of the award and the Collector has to justify his award under sec. 19(1) of the Act, *Harish Chandra* v. *Secretary of State*, 11 C. W. N. 875; *Marwadi Padmaji* v. *Deputy Collector of Adoni*, 24 I. C. 141, S. C. 27 M. L. J. 106. When the claimant entertains a very exaggerated and reckless idea of the value of his land, his evidence cannot be relied upon, *Higgins* v. *Secretary of State*, 22 C. W. N. 659=46 I. C. 221. In ascertaining the market value of ands too much importance must not be attached to evidence of offers, *Mohini Mohan* v. *Secretary of State*, 25 C. W. N. 1002. But see *Ganesh*

Chandra v. *Secretary of State* (unreported) R. A. 102 of 1918 decided on 17-2-20.

SUB-SECTION (1), **Clause (1)—Market-value of land—mode of ascertaining it and principles for fixing the amount of compensation.**

There was a long discussion in the Council regarding the meaning of the word "market-value" and the Privy Council case, reported in 16 Mad. 369 : L. R. 20 I. A. 80, in which it has been held that temples and carvings have no *market-value*, was discussed at length and it was proposed to substitute the word 'value' for '*market-value*' but the proposal was negatived by the majority. *See the Proceedings in the Council ;* also see *Merwanji Cama, In re*, 9 Bom. L. R. 1232.

The meaning attached to the term "market-value" is not defined in the Act. The American Courts have given the following definition ; "it is the price which the property will bring when it is offered for sale by one who desires, but is not obliged to sell, and is bought by one who is under no necessity of having it," see *Stewart* v. *Ohio Pac. R. R. Co.*, 38 W. Va. 438 : 18 S. E. 604, also *Wernicke* v. *Secretary of State*, 13 C. W. N. 1046 ; 2 I. C. 562. In recent Calcutta cases it has been thus defined : The *market-value* of land is the price that an owner willing, and not obliged, to sell might reasonably expect to obtain from a willing purchaser with whom he was bargaining for the sale and purchase of land, *Girish Chandra* v. *Secretary of State*, 24 C. W. N. 184=55 I C. 150=31 C. L. J. 63. *Sadhu Charan* v. *Secretary of State*, 31 C. L. J. 63, also *Kailas Chandra* v. *Secretary of State*, 17 C. W. N. 315=17 C. L. J. 34=18 I. C. 638. According to Bombay High Court the term means the price which would be obtainable in the market for a concrete parcel of land with its particular advantages and its particular drawbacks, both advantages and drawbacks being estimated rather with reference to commercial value than with reference to any abstract legal rights, *Bombay Improvement Trust* v. *Jalbhoy*, 33 Bom., 483, s. c. 11 Bom. L. R. 674. *Sadhu Charan* v. *Secretary of State*, 31 C. L. J. 63(64) ; *Roghu Nath Das* v. *Collector of Dacca*, 11 C. L. J. 612, s. c. 6 I. C. 457. Market-value means the price that would be paid by a willing buyer to a willing seller, where both are actuated by the business principles prevalent at the time in the locality, *Msmt. Birjrani* v. *Deputy Commissioner, Sitapur*, 57 I. C. 301.

Market-value means the value that would be paid in the market by a purchaser of good ability and well qualified to put the land acquired to the best advantage, *Birabarnarayan* v. *Collector of Cuttack*, 2 P. L. J. 147, s. c. 39 I. C. 14.

Where Government takes property from private persons, it is only right that those persons should obtain such measure of compensation as is warranted by the current price of similar property in the neighbourhood,

without any special reference to the uses to which it may be applied at the time when it is taken by the Government, or to the price which its owners may previously have given for it. In accordance with this principle, the question for enquiry is, what is the *market-value* of the property, not according to its present disposition, but laid out in the most lucrative way in which the owners could dispose of it, *Prem Chand Bural* v. *Collector of Calcutta*, 2 Cal., 103. Followed in 10 Bom., 585 and in 15 Bom., 279; see also 1 Bom. L. R. 454; 11 I. C. 62.

In determining the current price, *temporary* rise or boom in price may be taken into consideration, *Karachi Municipality* v. *Khatan Mal Hiranand*, 27 I. C. 326=8 S. L. R. 126.

The principle upon which the compensation is to be assessed is correctly stated in 2 Cal., 103, *viz.*, that the value of property should be determined, not necessarily according to its present disposition, but laid out in the most lucrative and advantageous way in which the owner could dispose of it, which in the present case would be by laying it out for building purposes The question, then, is what would be its *market-value* if so laid out; and the most reliable evidence on that question must be the rates per square foot at which similar building sites in the neighbourhood have recently been sold, *The Collector of Poona* v. *Kashinath Khasgimala*, 10 Bom., 585., (2 Cal., 103, referred to). See also *Ram Saran* v. *Collector of Lahore*, 9 I. C. 228=9 P. W. R. 1911, *where* it has been *held* that that the price should be assessed with reference to the *probable use* which would give the owner the best return. The value of the land should, no doubt, be calculated with reference to the most lucrative and advantageous way in which the land might be used; but the fact that the land would never been have allowed to be built on must be taken into consideration in ascertaining the *market value*; such land, therefore cannot be valued as a building site, *Ujagar Lal* v. *Secretary of State*, 8 A. L. J. 796, s. c. 11 I. C. 815. Cf. *Gurudas* v. *Secretary of State*, 18 C. L. J. 244.

In estimating the value of a land, its situation is to be taken into account. The value should be fixed also with reference to the **probable use** to which the lands are most likely to be put in the near future, and not merely in accordance with their present use or disposition, *Secretary of State* v. *Nanak*, 61 P. W. R. 1916=126 P. L R. 1916. Cf. *Hughli Mills Co.* v. *Secretary of State*, 12 C. L. J. 489 : 34 Cal. 599 (604); *Daya Khusal* v. *Asst. Collector of Surat*, 38 Bom. 37. In assessing compensation the Court should take into account not only the present purpose to which the land is applied but also any other more beneficial purpose to which in the course of events it might within a reasonable period be applied, just as as an owner might do if he were bargaining with a purchaser in the market, *Mohini Mohan* v. *Secretary of State*, 25 C. W. N. 1002. This doctrine of probable use or **potential value** must be accepted with certain

limitations when such use depends upon a remote contingency. Cf. *Secretary of State* v. *Basawa Singh*, 17 I. C. 764, s. c. 19 P. W. R. 1913.

Land in the neighbourhood of a town always has a ***potential value*** and this should be determined with reference to its future utility, *Dorabji Cursetji, In re*, 10 Bom., L. R. 675. There are two guides to assessing the value of potentialities : (*a*) the opinion of experts (*b*) evidence of the value the purchasing public has put upon them within a reasonable period, prior to the date of acquisition, *Ibid.* For *Contra* see *Sorabji Jamsetji, In re* 10 Bom., L. R. 696.

The land is not like ordinary goods, the value of which can be fixed, on inspection, by a person who has no knowledge of them. Its value is the result of various factors, working in different ways and degrees, and they cannot be apprehended and estimated aright off-hand. An honest and useful valuation cannot be made simply by visiting the land and picking up orally some casual and untested information or gossip which may be interested or one-sided. These considerations apply specially to lands in or near large towns. Further, it is not correct to say that, in estimating the value of the land, no consideration as to its *future utility* ought to find place ; but future utility must be estimated by prudent business calculations and not by mere speculations and unpractical imagination. (The advantage of expert opinion in valuation of land explained), ***Rajendra Nath Banerjee*** v. ***Secretary of State.*** 32 Cal., 343.

In awarding compensation for land, the Court should adopt the principle that " an owner is entitled to have the price of his land fixed in reference to the **probable use** which will give him the best outturn." *Hiranand* v. *Secretary of State*, 21 P. R. 1905 (2 Cal., 103; 10 Bom., 585 ; 16 Mad. 369 P. C.; 15 Bom., 279 and 44 P. R. 1904, cited); 9 P. W. R, 1911=9 I. C. 228.

In determining the market value of land, the fact of its probable user should be taken into consideration, *In re Government* v. *Dayal Mulji*, 9 Bom , L. R. 99.

Where in a case of set back, land with buildings thereon was taken up by the Municipal Commissioner from a private owner, ***held***, that the amount of compensation awarded to the owner should be calculated with regard to the price given within a few years previously for land of a similar character in the immediate neighbourhood of the land in question, ***Held*** also, that the addition of 15 per cent. could not be allowed. ***Municipal Commissioner for the City of Bombay*** v. ***Syed Abdul Huk***, 18 Bom. 184. (14 Bom., 292, followed).

The **recognised modes** of ascertaining the value of land forthe uprpose of determining the amount of compensation are—(1) If a part or parts of the land taken up has or have been previously sold, such sales are taken as a fair basis upon which, making all proper allowances for situation,

&c., to determine the value of that taken. (2) To ascertain the net annual income of the land, and to deduce its value by allowing a certain number of years' purchase of such income according to the nature of the property. (3) To find out the prices at which the lands in the vicinity have been sold and purchased, and making all due allowance for situation, to deduce from such sales the price which the land in question will probably fetch, if offered to the public. In the case of land in the vicinity of a town where building is going on, it would be unjust to adopt the second of the above methods, if there is a fair probability of the owner being able, owing to its situation, to sell or lease his land for building purposes. The value of land should be determined, not necessarily according to its present disposition, but laid out in the most lucrative and advantageous way in which the owner can dispose of it. The market-value "at the time of awarding compensation" may fairly be taken to mean "at the time when the proceedings under the Act are taken." *In the matter of the Land Acquis tion Act, Munji Khetsey (claimant)*, 15 Bom., 279 ; (2 Cal., 103 and 10 Bom , 585, referred to). See also, 1 Bom., L. R. 454.

There are three recognised modes of determining the market-value ; (i) recent sales of the land, (ii) capitalisation of the annual income of the property, (iii) comparison of sales of lands in the vicinity. In going by averages i. e., in adopting the third mode mentioned above, the exceptional instances should always be excluded from the computation. The only instances to be taken into consideration are those that are as similar as possible to the one in point of site, but also as regards all other intended circumstances, *Amrita Lal* v. *Secretary of State*, 22 I. C. 78 (Cal.)

Profit from the most advantageous disposition of land is one test for determining its *market value*. The *probable use* of land in the most advantangeous way in accordance with the use already made of neighbouring lands, leads to speculative advance in prices to which regard should be paid. The utility of land is an element in estimating its value, that is, the utility which may be calculated by a prudent business man. The market-value of the acquired lands is also to be ascertained from recent instances of sales in the same or the adjoining localities and from the average rental of these and similar lands in the vicinity. The general demand for land, and the consequent reflex action on the prices of all classes of lands, is a factor in the calculation of the *market-value* of lands under acquisition, *Fink* v. *Secretary of State*, 34 Cal., 599 (26 Bom., 1 ; 2 Cal., 103, 32 Cal. 343, referred to).

When the land is acquired for quarrying purposes, its **adaptablity** for quarrying may be taken into consideration in assessing the compensation for it, *Daya Khusal* v. *Asst. Collector, Surat*, 38 Bom., 37=15 Bom., L R. 845=21 I. C. 320 ; *Raghunatha* v. *Secretary of State* 44 Mad., 264, s. c. 39 M. L. J. 623=(1920) M. W. N. 759=13 L. W. 11=60 I. C. 187 : This

adaptability value is of no account where it is not a realisable possibility by reason of external circumstances, for example, when the special adaptability cannot be turned to a practical end by reason of the existence of permanent tenants or so forth, *Bombay Improvement Trust* v *Jalbhoy Adeshir* 33 Bom., 483=11 Bom., L. R. 674; *Warnicke* v. *Secretary of State* 13 C. W. N. 1046, s. c. 2 I. C. 562. The basis of the compensation for a quarry is the amount of workable stone likely to be got therefrom taken at a rate to be determined from the evidence (per Fletcher and Greaves JJ., Huda J. dissenting in 44 I. C. 1). But other views have also been expressed on this point; see the judgment of Huda J. in 44 I. C. 1, also see 2 P. L. J. 147, s. c. 39 I. C. 14 *post*.

Where the Government was taking gravel from a certain piece of land and used to pay the owner at a specified rate, and it afterwards became necessary to acquire the land, it was *held* that compensation was rightly assessed at twenty times the average income actually obtained by the owner and that he was not entitled to claim compensation for the entire quantity of gravel contained in the land, *Birabarnarayan* v. *Collector of Cuttack*, 2 P. L. J. 147, s. c. 39 I. C. 14.

The value of the land to the owner is what must be regarded, and that is the price which it will fetch if disposed of on most profitable terms. The owner is not to be deprived of the most advantageous way of selling his land by reason of the fact that it is subject to immediate acquisition. *Improvement Trust, Bombay* v. *Karshandas*, 33 Bom., 28, s. c. 10 Bom. L. R. 688 : 1 I. C. 451 : *Amritalal* v. *Secretary af State*, 22 I. C. 78 (Cal.)

Land does not mean merely firm land but also land covered with water, and in estimating the market-value of such land, the benefit derived from such water should also be taken into account, *Nalinaksha Bose* v. *Secretary of State*, 5 C. L. J. 62n.

In arriving at a proper rate of compensation regarding **house-sites**, the value of the adjoining land is not to be the criterion if it is unfit for building purposes, *Venkataharier* v. *Divisional Officer*, *Tinnevelly*, 14 I. C. 625=(1912) M. W. N. 460.

In estimating compensation for agricultural land the Court can take into consideration whether the land in question is a possible **building site** *Secretary of State* v. *Gopal Singh*, 1 I. C. 210. But where the land is not at the disposal of the owner for sale for building site, it should not be valued as a possible building site, but on the basis of capitalisation of the annual profits thereof, *Orde* v. *Secretary of State*, 16 A. L. J. 301=44 I. C. 923. See also *Ujagar Lal* v. *Secretary of State* 8 A. L. J. 796.

The amount of compensation, is to be determined with reference to the **market-value** of the land in view of the use, which it might, at the best, be ordinarily put to, at the time of the publication of the declaration of its intended acquisition and any probable increase in the value of the

land, in future, which might accrue from the use to which the land is to be put after its acquisition, must not be taken into consideration in assessing such compensation, *Zulfikar Khan* v. *The Collector of Mainwali*, 90 P. R. 1905. 49 P. L. R. (1906) (44 P. R. 1904 and 21 P. R. 1905, referred to).

In the determination of the question of market value, a Court has to look to the **commercial value** rather than to abstract legal rights : *Bombay Improvement Trust* v. *Jalbhoy*, 33 Bom., 483, s. c. 11 Bom. L. R. 674 ; *Sadhu Charan* v. *Secretary of state*, 31 C. L. J. 63 (66). When the market value cannot be ascertained on the basis of the produce or by means of recent sales of the land the Court may determine it by sale of similar land in the neighbourhood, *Government of Bombay* v. *Karim Tar Mahomed*, 33 Bom. 325 s. c. 10 Bom. L. R. 660 : 3 I. C. 273, As to the utility of a comparison of the prices obtained on sales of land in the neighbourhood see *Secretary of State* v. *I. G. S. N. & Ry. Co. Ltd.*, 36 Cal 967=10 C. L. J. 28'=11 Bom. L. R. 1197 (P. C.)=19 M. L. J. 648 : *Ram saran Das* v. *Collector of Lahore*, 9 I. C. 228=9 P. W. R 1911.

In referring to **sales** of neighbouring lands, care should be taken to exclude sales by limited owners. So it has been held that a sale by a Hindu widow connot be treated as a fair basis for calculating the market value, inasmuch as full value is never fetched at such transactions, *Natyanadda* v. *Secretary of State*, 57 I. C. 734.

The method of determining the market value with reference to the sales of the neighbouring lands is however subject to this defect that no two pieces of land can be precisely parallel in all their circumstances and conditions. There must always be differences though of varying degrees and no hard and fast rule can be laid down as to the allowance that ought to be made for such differences, *Improvement Trust of Bombay* v. *Karsandas*, 33 Bom. 28, s. c. 10 Bom. L. R. 688=1 I. C. 451. See also *Raghunath Das* v. *Collector of Dacca*, 11 C. L. J. 612, s. c. 6 I. C. 457 ; *Amrita Lal Basak* v. *Secretary of State*, 22 I. C. 78.

In estimating the value of a land on the basis of conveyance of another lands, question of similarity between the two should be particularly considered. There can be no valuation on this basis, where there is no such similarity, *Hem Chandra* v. *Secretary of State*, 34 C. L. J. 204=56 I. C. 758. See also 21 I. C. 270=174 P. W. R. 1913=309 P. L R. 1913.

The mere fact that the owner of the property had obtained it *cheap* would not entitle the Government to get it under the fair market-value; but the price which was paid by the owner very shortly before the publication of notification would be a valuable piece of evidence to help the Court in ascertaining the true market-value of the property, *Qamar Ali* v. *Collector of Bareilly*. 23 I. C. 542. Cf. also *Gonesh Ch.* v. *Secretary of State*, *supra* at p. 59.

In calculating the compensation the Court should not take the amount

which the claimant had expended in the purchase and improvement of the land, as if it had been invested on loan since the date of such expenditure at the prevailing rate of interest, and treat the total amount so arrived at, as the market-value of the land, *Secretary of State* v. *Kartic Chandra Ghose*, 9 C. W. N. 655.

The methods of valuation of land may be classified under three heads: (1) The opinion of valuators or experts, (2) the price paid within a reasonable time in *bona fide* transactions of purchase of the lands acquired or the lands adjacent to the lands acquired and possessing similar advantages and (3) a number of years' purchase of the actual or immediately prospective profit from the lands acquired. It is generally necessary to take two or all of these methods of valuation in order to arrive at a fairly correct valuation. Exact valuation is practically impossible. The approximate market-value is all that can be aimed at. Much reliance cannot be placed on the evidence of experts, unless it is supported by or coincides with other evidence. The burden of proof is ordinarily on the claimant in the Court of the Special Judge to prove that the valuation made by the Collector is insufficient. But the burden must vary according to the nature of the enquiry made by the Collector. If no evidence has been taken by the Collector and if no reasons have been given in his decision to support his conclusion, the claimant has a very light burden to discharge. The *ipse dixit* of a Collector has very little weight and is not *prima facie* evidence, of the correctness of his award; *Harish Chunder* v. *Secretary of State*, 11 C. W. N. 875. Followed in *Manindra Chandra* v. *Secretary of State*, 41 Cal., 967=18 C. W. N. 884=23 I. C. 402. As to the value of *surveyor's* opinion and his report see *Government of Bombay* v. *Karim Tar Mahomed*, 33 Bom., 325, s. c. 10 Bom, L. R. 660=3 I. C. 273. Ordinarily the Courts rely far more on evidence of sales than on *expert opinion*, *Dorabji Cursetzi, In re*, 10 Bom. L. R. 675. In calculating the market value of land from recent **instances of sales**, diversity of the various shades of interest should be taken into consideration, *Fink* v. *Secretary of State*, 34 Cal., 599. As to how for **recent sales** can form a basis for valuation, see 15 Bom. 279; 23 I. C. 542; 11 C. W. N. 875; 2 Cal. 103.

In a case in which Calcutta *bustee* land was the subject matter of acquisition under this Act as varied by S. 557 of the Calcutta Municipal Act (Bengal III of 1899) it has been *held* that any use to which the land may be put in future should not be taken into consideration in determining its value. The valuation should be according to the market-value at the time of the acquisition, *Manindra Chandra* v. *Secretary of State*, 41 Cal., 967=18 C. W. N. 884=23 I. C. 412. But see *Amrita Lal Basak* v. *Secretary of State*, 22 I. C. 78 (Cal.)

In determining compensation the Court distinguished between the occupied and unoccupied land. In the case of the former, the income

yielded was taken into account with a view to consider the number of years' purchase to be allowed for the land, and in estimating the value of the godowns yielding rents, a deduction was made for the chance of some of them being unoccupied for part of the year, as well as for periodical repairs and municipal taxes. In the case of unoccupied land it was *held* that the thing to be looked at, was not the cost of what had been done to preserve the land or the money spent on improvements, but the market-value at the time with an allowance for the manner in which the land was taken from the claimant. Per, Couch, C. J.—"The market-value is not to be estimated by the costs of what may have been done to preserve the land. It is not to be estimated by the money the owner may have spent in improving the land; for a man might spend a great deal of money on improvements, and yet the result might be that the market-value was not increased to the amount which he had thought fit to spend," *Collector of Hooghly* v. *Raj Kristo Mookerji*, 22 W. R. 234. The method of **hypothetical** development is open to the objection that it involves or presupposes the intervention of a third person, called the **Speculator** or **Exploiter** i. e. to say, a person who purchases the land wholesale from the claimant in order afterwards to sell it retail for building purposes, *Improvement Trust of Bombay* v. *Karsandas*, 33 Bom. 28, s. c. 10 Bom. L. R. 688 : 1 I. C. 451. An award of compensation cannot be made on speculations and by hypothetical schemes of the future development of the land, *Basavaraju* v. *Head Asst. Collector, Bezwada*, 15 I. C. 672. *Marwadi Padmaji* v. *Deputy Collector of Adoni*, 27 M. L J. 106=24 I. C. 141. The method of hypothetical development receives corroboration when an identical result is obtained by calculation in other methods ; *Ibid*. For the relevancy of the evidence of hypothetical building schemes, see *Government of Bombay* v. *Karim Tar Mahomed*, 33 Bom. 325, s. c. 10 Bom. L. R. 660 : 3 I. C. 273. In assessing the amount of compensation for the compulsory acquisition of open sites of land hypothetical building schemes of development are admissible in evidence and are a proper method of valuation, *Marwanji Mancherji* v. *Government of Bombay*, 16 Bom. L. R. 55 (P. C.) (over ruling 10 Bom. L. R. 907). For a close analysis of the *hypothetical* method of valuation, see *Dhanjibhoy Bomanji, In re*, 10 Bom. L. R. 701. See also *Raghunath Das* v. *Collector of Dacca*, 11 C. L. J. 612=6 I. C. 457. The future utility of the land acquired, if considered at all, must be estimated by prudent business calculation, and not by mere speculation and impracticable imagination, *Rajendra* v. *Secretary of State*, 32 Cal., 343, *Fink* v. *Secretary of State*, 34 Cal. 599. Speculation as to the effect which any suggested development may produce on prices must be excluded, except to the extent to which it is shown that such speculation had actually entered into the market price of the land to be acquired at the date of declaration, *Marwadi Padmaji* v. *Deputy Collector of Adoni*, *Vide Supra*.

In assessing compensation for lands, where the letting value of the land is not ascertainable and the selling value in the neighbourhood does not afford a reliable guide, the best course is to ascertain what is the annual value of the produce of the land in question and to proceed on that basis, *Ram Sahoy Shah* v. *Secretary of State*, 8 C. W. N. 671.

The **income** of a property whether actual or imaginary is no doubt one of the recognised starting points for a valuation. But it is not the only element to be taken into consideration. In cases of residential properties, the *market value* should not be arrived at on the basis of *hypothetical* rent, because there may be properties which possess a value not for the return they give but for the advantages and enjoyment which accrue from their possession, *In re Sukhanand Gurumukhrai*, 11 Bom. L. R, 1176, s. c. 34 Bom. 486.

Evidence of **offers** as an index of market value is of little importance, *Goverment of Bombay* v. *Merwanji Muncherji*, 10 Bom. L. R. 907 (919). Too much weight should not be attached to such evidence, *Mohini Mohan* v. *Secretary of State*, 25 C. W. N. 1002. But this does not mean that a genuine offer be altogether ignored, *Gonesh Chandra* v. *Secretary of State* (unreported) R. A. 102 of 1918 decided on 17th February 1920. The offer must be proved by the offeror himself, and the offeror must show his offer was based on a comparison of the prices of neighbouring lands, 10 Bom. L. R. 907 (919).

Where there are two *data* available for ascertaining the market-value of the land sought to be acquired, one based on the market value of the neighbouring lands and the other on the classification of lands into agricultural and building sites, it is safer to adopt the former valuation in determining the market value of the land and not the latter, as it is an uncertain basis, *Marwadi Padmaji* v. *Deputy Collector of Adoni*, 27 M. L. J. 106=24 I. C. 141.

In calculating the amount of compensation for lands, with buildings on the **rental** should be the basis of calculation ; so that, after arriving at the net rental, what has to be ascertained is the rate of return which investors in this class of property expect, for, that serves to determine the number of years' purchase it is proper to allow, after giving due weight to any special conditions that may affect the property advantageously or otherwise. As to the contention that the property was, at the date of the declaration, capable of fetching a higher rental which was apparent from the fact that the rents of their property had been steadily rising for 16 years previous to 1899, *held*, that though for the purpose of this enquiry, it was legitimate to have regard to the past history of the rental, it could not be taken for granted that enhancement would continue possible for ever, and still less that there was such a certainty of this as to make it a basis for fixing a higher purchase price, *Raghunath Das* v. *Secretary of State*, 29 Bom.

514 : 7 Bom. L. R. 269. As to the principle of assessment on **rental value**, also see *Biswa Ranjan* v. *Secretary of State*, 11 I. C. 62 (Cal.) The principle of *rental basis* should not be applied in valuing a *bazar*. In ascertaining the market value of a *bazar*, not only the permanent rents payable for the shops in the bazar should be taken into consideration but also the loss of earnings in respect of profits from tolls received from people who come to the bazar with baskets should be taken into consideration. The valuation of the bazar at 18-2-11 years' purchase is fair and proper, *Grey* v. *Secretary of State*, 39 I. C. 619.

When determining the value of **frontage** land, the depth is a question of supreme importance. What is a suitable depth must primarily depend on the character of the buildings in the locality. The value of a building frontage must depend on the higher rents that can be obtained for the shops or rooms facing the street and as the portion of these rents to the owner rents of the back rooms decreases so does the value of the frontage land decreases, *Government of Bombay* v. *Karim Tar Mahomed*, 33 Bom. 325=10 Bom. L. R. 660=3 I. C. 273.

In assessing the market-value of house property, the Court awarded a capital sum, which at the rate of six per cent. per annum, would yield interest equal to the ascertained annual rental of the premises after deducting the amount necessarily expended for annual repairs, *Carey* v. *Banu Miya and Kalu Miya*, 10 Bom. H. C. R. 34.

Where no other data are available, the value of a house can be ascertained on the basis of the costs, incurred in constructing it, *Secretary of State* v. *Sohan Lal*, 76 P. W. R. 1918=60 P. R. 1918=44 I. C. 883. Cf. *Government* v. *Dayal Mulji* 9 Bom. L. R. 99 ; *In re Sukhanand Gurumukhrai* 34 Bom. 486=11 Bom. L. R. 1176=4 I. C. 278.

In absence of other data, compensation can be assessed on the basis of the Municipal assessment, and when that is done, deductions should be first made from the Municipal assessment for road cesses, taxes, ground rents and other costs, and the balance should be capitalised at 20 years' purchase in order to ascertain the proper valuation of the land, *Tulshi Makhania* v. *Secretary of State*, 14 C. W. N. lxxx (80). In computing the value of a house in a town of growing importance twenty times the rental value and the actual cost of building a similar house should be allowed, *Rajammal* v. *Headquarters Deputy Collector, Vellore*, 25 I. C. 393.

Temporary rise in price (resulting from such causes as the anouncement of the transfer of Capital), though speculative in character and irrespective of the letting value of the land, is an element to be considered in determining the market-value, *Karachi Municipality* v. *Khatanmal Heranand*, 8 S. L. R. 126=27 I. C. 326.

Certain property was acquired for the improvement of the city of Bombay under the Bombay City Improvement Act. The said property

though a single parcel, was treated by the tribunal of appeal as falling under two categories, that part which abutted the street was regarded as fully developed and the portion lying at the back as capable of further development. The rental for the first part was capitalised by the tribunal at 16⅔ years' purchase and the back portion at 16 years' purchase. *Held*, that the decision of the tribunal on all the points was fair and reasonable, *Anandrao Vinayak* v. *Secretary of State*, I. L. R. 29 Bom., 565 : 7 Bom., L. R. 580 (I. L. R. 16 Mad., 369, P. C, referred to).

The proper method for ascertaining the market value of agricultural lands situated within a municipal area, and in the occupation of occupancy tenants, is, in the first instance, to leave out of consideration, the value of the occupancy rights, and to ascertain what would be the market value of the land if it were put to the most lucrative use, and then the value of the rights of the occupancy tenants is to be ascertained, *Collector of Dacca* v. *Haridas Bysak*, 14 I. C. 163. Where occupancy or other rights are claimed in the land under acquisition, the correct rule to be observed is to value the land in the first instance, including all interests in it, and to apportion the amount so ascertained among the parties interested according to their interests, *Raja of Pittapuram* v. *Revenue Divisional Officer, Cocanada*, 42 Mad., 644 : 36 M. L. J. 455 : 51 I. C. 656. Cf. *Collector of Belgaum* v. *Bhima Rao*, 10 Bom., L. R. 657. When the land to be valued is in a municipal town, with buildings and trees on the proper method of calculating the compensation in the absence of other evidence will be to capitalise the letting value of the land and to add to it the value of the buildings and trees standing thereon, *Krishna Bai* v. *Secretary of State*, 42 All. 555=18 A. L. J. 695=57 I. C. 520.

The Government having commenced proceedings to acquire a plot of land containing granite quarries besides ancient temples and sculpture, a reference was made to the Court as to the amount of compensation to persons interested in the land. *Held* (1) with regard to the nature of the property that only the value of the stone quarries as yielding profit could form the subject of assessment, and the value of the antiquities could not ; for. under the circumstances, no market value could be assigued to the antiquities ; (2) the right, if not the only course of proceeding, was to estimate the rent at which possibly the whole plot might be leased, on the basis of how much rent a portion of the plot when leased for quarries, had in fact obtained for the Zeminder ; (3) to calculate the purchase-money, as the first Court had done, at 25 years of such rent was proper, and no reason appeared for reducing this number of years to fifteen, *The Secretary of State* v. *Shanmugaraya Mudaliar*, 16 Mad., 369, P. C. : L. R. 20 I. A. 80.

Property for the purpose of valuation cannot be divided into **fragments** ; it must be taken as a whole and its income ascertained on the assumption that the huts which stood on the land were let out to tenants ;

the value of the land cannot and ought not to be determined independently of the huts. In assessing compensation payable to owners of *bustee* land in Calcutta, the proper method of valuation is to ascertain the value of the land and huts as a whole, and deducting therefrom the value of the huts of which the tenants were the owners, their tenancy being tenancy-at-will, having practically no market-value, *Secretary of State* v. *Belchambers*, I. L. R. 33 Cal., 396 : 3 C. L. J. 169 : 10 C. W. N. 189.

In claiming compensation, the owner can seek to prove *either* what the property would fetch if sold in one block, *or* what is the present value if he plotted out the property and sold it in lots : *Government of Bombay* v. *Karim Tar Mahomed*, 33 Bom., 325, s. c. 10 Bom., L. R. 660 : 3 I. C. 273 :

When compensation is fixed on the general principle of a sale of the land split up into parcels suitable for building, it is not only unnecessary but inappropriate to make a special deduction on account of the small area marked off for the roadway, *Improvement Trust, Bombay* v. *Karsandas*, 33 Bom., 28, s. c. 10 Bom., L. R. 688 : 1 I. C. 451.

The number of years' purchase which it would be right to allow with regard to one sort of property, might not be a fair allowance for other kinds of property. The determination of the value of property by allowing a certain number of years' purchase depends upon the nature of property and several other circumstances, *Bhola Nath Mullick* v *Heysham*, 17 W. R. 221 : 11 B. L. R. 230.

Held, as to the value of the land, that the claimants were entitled, as the Act declared, (sections 23 and 24), to obtain as compensation the market-value at the date of the above declaration of requirement, including such advance in value as had then taken place. Any rise in value afterwards likely to accrue from the use to which the land was intended to be put was expressly excluded from consideration in determining the value by sec. 24. *Secretary of State for Foreign affairs* v. *Charlesworth Pilling and Co.* 26 Bom., 1. (P. C.) : 5 C. W. N. 35n. and 138n.

The plaintiffs claimed compensation for certain lands forming portions of four public roads which were taken by the defendant for construction of docks at Kidderpore. The plaintiffs claimed the lands as part of their permanently settled estate. The defendant alleged that all of them were ancient public roads in which the plaintiffs had no interest beyond that of public use, *Held*, that the lands as roads had no separate market-value and that the plaintiffs were not entitled to any compensation, *Monmotho Nath Mitter* v. *Secretary of State*, 25 Cal. 194 : I. C. W. N. 698, P. C. Distinguished in *The Chairman of Howrah Municipality* v. *Khetter Kristo Mitter*, 10 C. W. N. 1044.

Where it was shown that the land to be acquired was subject to a *mokrari* lease in favour of the Government, and the Court in estimating

the compensation had deducted 5 per cent. from the rent on account of collection charges, *held*, that such deduction was excessive and that having regard to the fact that the amount was Rs. 85-4 and was collected only once in a year, 4 annas was all that should have been deducted, *Secretary of State* v. *Shambahadoor*, 10 Cal. 769.

When a claimant binds himself by a previous agreement that he will not ask for more than a particular sum, he is not entitled to get more than the stipulated sum, *Fort Press Co.* v. *Municipal Corporation of Bombay*, 44 Bom. 797.

A vacant piece of land was acquired under this Act. In making the award the Court assumed the existence of a hypothetical tenant on each plot and calculated the respective values of what were designated as landlord's interest and raiyat's interest. The total of the sums which represented the value of these interests was taken as the value of the land, *Held* the award was based on unsound principle. How much was recoverable by a landlord from a hypothetical tenant might be determined with some approach to accuracy from the rent receivable by him. But the exact value of the raiyat's interest was dependant on a number of unknown factors, *Hem Chandra* v. *Secretary of State*, 31 C. L. J. 204, s. c. 56 I. C. 758.

Residental property: A man who buys land and builds thereon does not necessarily produce a marketable commodity of the value of his outlay, but it does not follow that he never does, and in determining the value of his house, the procurable rent for it in the market as well as the cost of building a new one should be taken into consideration, *In re Sukhanand Guru Mukhrai*, 34 Bom. 486, s. c. 11 Bom. L. R. 1176 ;

Frontage: When determining the value of the frontage land the depth is a question of supreme importance. What is a *suitable* depth must primarily depend on the character of the buildings in the locality. It cannot be taken as a hard and fast rule that back land must be worth *half* the *frontage* land. *Government of Bombay* v. *Karim Tar Mahomed*, 33 Bom. 325, s. c. 10 Bom L. R. 660: 3 I. C. 273. In fixing the proportion of value between the frontage land and the back land, the distance of the latter from the road should be taken into consideration, *Gurudas* v. *Secretary of State*, 18 C. L. J. 244=22 I. C. 354.

Clause (2).—Damage sustained by reason of the taking of any standing crops or trees.

This clause refers to any standing crops or trees which may have been grown on the land after the date of declaration and before taking possession of the land by the Collector.

In assessing compensation under this section, all that the Collector is competent to take into consideration is, (1) the market value of the land at the date of the publication of the declaration under secs. 6, and (2) the

damages sustained by the person interested, by reason of the taking of only such standing crops or trees as may actually have been on the land at the time of the Collector's taking possession thereof, *Ma Gyi* v. *Secretary of State*, 3 L. B. R. 117. Damages "sustained at the time etc." must mean damages actually sustained as well as that which can reasonably be anticipated and estimated then, *Indo Burma Petroleum Co.* v. *Collector of Yenangyaung*, 12 I. C. 202. In determining the compensation for an orchard, it will not be a satisfactory method to value the soil and the trees separately and then to add up the two values together. Such a method should only be adopted failing the possibility of arriving at the value of the lands as orchard lands. The value of an orchard should be ascertained with reference to sales of other orchards in the vicinity. The soil and the trees should be valued together and not separately. *E. M. Cohen* v. *Secretary of State*, 2 Pat. L. J. 615=43 I. C 17.

Fruit bearing trees likely to bear fruit for a number of years, e. g. mango trees, should also be valued at twenty years, annual rental, *Rajammal* v. *Headquarters Deputy Collector, Vellore*, 25 I. C. 393.

Compensation was awarded under the Land Acquisition Act for land acquired and for value of trees thereon. One half of the value of trees was given to an under-raiyat who planted the trees, and the other half was given to the landlord, *Hara Gopal Singh* v. *Abu Bakkar*, 3 C. L. J. 36n.

When a person asked his land to be valued as vacant land to be used for the purpose of erecting buildings, he could not at the same time, claim the value of the trees on it, on the footing that they would still remain there—the claims being inconsistent. The proper value of the trees would be their value as timber, after they have been cut down, *Secretary of State* v. *Duma Lal*, 13 C. W. N. 487.

Clause (3).—Damage sustained by the owner by reason of severing such land from his other land.

Any compensation that could be awarded for the severance, ought to be assessed separately and distinctly from other compensations due on the acquisition, *Ma Gyi* v. *Secretary of State*, 3 L. B. R. 117. As to the meaning of the words, "sustained at the time of the Collectors' taking possession" see *Indo Burma Petroleum Co.* v. *Collector of Yenangyaung*, 12 I. C. 202.

Under the provisions of the Land Acquisition Act, part of an owner's tea garden land was taken, and by the construction of a railway line, several acres of land to the south of the line were cut off from the northern portion of the garden, where the residence of the manager and all buildings and offices connected with the management and the coolie lines were situated. The line ran through very deep cuttings for a considerable portion of its length of about a mile and a half, some of which were incapable of being crossed by coolies employed on either side of the line of railway. *Held*,

that in computing the amount of compensation to be awarded, in addition to the market value of the land and the amount for the "standing charges" and the statutory allowance of 15 per cent., the increased cost of working the garden in consequence of the severance of the one portion from the other, should also be taken into consideration, *Baraoora Tea Co.* v. *Secretary of State*, I. L. R. 28 Cal. 685.

Under clauses (3) and (4) of sec. 23 of the L. A. Act, the assessment of the value of the land acquired regardless of the user for which it is specially fitted cannot lead to an adequate award of compensation for the loss sustained by the owner. The special adaptability of the land acquired cannot be altogether ignored in the determination of the market-value, *Barada Prosad Dey* v. *Secretary of State*, 25 C. W. N. 677.

Where a portion of a building used for residential purposes was acquired by Government and it was found that the remaining portion was rendered thereby useless for such purposes ; *held* that the compensation to the extent of the entire holding is to be paid owing to damages caused by severance, in as much as after the part acquired has been cut off from the rest of the land, the balance would be useless for residential purposes. *Sarat Chandra Bose* v. *Secretary of State*, 10 C. W. N. 250.

By the construction of a railway part of an owner's land was taken, and several acres were severed from the rest and left without access ; the land was at the time the railway was constructed agricultural, but it had a prospective value for building. *Held*, that in assessing the amount of compensation it should be taken into consideration that by reason of the severance all access was cut off, *The Queen* v. *Brown*, L. R. 2 Q. B. 630.

But no compensation for the severance of a portion of the plot can be allowed where the remaining portion has acquired a fancy value by the mere process of reducing the area, and the street itself by such acquisition became greatly improved, *Karachi Municipality* v. *Khatanmal Hiranand*, 27 I. C. 326, s. c. 8 S. L. R. 126.

Clause (4).—Damage sustained by a person, by reason of the acquisition injuriously affecting his other property, &c., &c. : If the acquisition injuriously affects other lands of the claimant, he will be entitled to compensation for such injury. Such right is not lost even if the loss is more than counterbalanced by the advantages he gains from the execution of a certain project ; *Nathar Hussain* v. *Deputy Collector, Usilampatti*, 31 I. C. 259. See also *Hughli Mills Co.* v. *Secretary of State*, 12 C. L. J. 489.

No damages can be claimed under this clause unless the property is acquired under the Act and unless the acquisition injuriously affects other lands. If a man sustains other damages, not by reason of the acquisition but by something else ; that is, if annoyance is caused to a person by the noise or smoke of trains or if his house is damaged on account of vibration

caused by running trains, &c., he cannot claim the statutory compensation, but his remedy lies in ordinary civil suit for damages. *Narain Chandra Boral* v. *Secretary of State*, 28 Cal., 152 : 5 C. W. N. 349.

If the acquisition injuriously affects the **earnings** of the person interested, he is to obtain the compensation beyond the market-value of the land. But no compensation should be given to persons not interested in the land, on the ground that their earnings may be affected by the change of the ownership or on any ground. The quarry-men, who are employed and earn money by working the quarries, are no more interested in the land than a ploughman or a digger is interested in the land on which he works for wages ; they are therefore not interested in the land in the sense intended by the Act ; and their earnings in which the Zemindar is not interested cannot enter into the question of compensation and increase the amount, *Secretary of State* v. *Shanmugaraya Mudaliar*, 16 Mad. 369, P. C. = 20 I. A. 80.—Distinguished in 28 Cal. 152 : 5 C. W. N. 349 on the ground that the case of the quarry-men who claimed compensation on the ground of their earnings being affected, though they had no interest in the land, was very different from the present. Here the claimant claimed an interest in the land which had been acquired, and the very objection to his claim admitted that he had that interest. The lessee of a tank has an interest in the land covered by the tank in which he rears and stocks fish and makes considerable profit by catching and selling fish.

A person is entitled to compensation under sec. 23, cl, (4) of the L. A. Act in respect of a Railway Company having made the "level crossing" across his private road giving access to his house, if he can show that he has sustained damage or loss for it by reason of his other property having been injuriously affected, *Madhu Sudan Dass* v. *Collector of Cuttack*, 6 C. W. N. 406.

Where by the construction of works there is a physical interference with any right, public or private, which the owners or occupiers of the property are by law entitled to make use of in connection with such property, and which right gives an additional market-value to such property, apart from the uses to which any particular owner or occupier might put it, there is a title to compensation, if, by reason of such interference, the property as a property is lessened in value. *The Metropolitan Board of Works* v. *McCarthy*, 7 H. L. E. and 1 App. 243. *See also Glover* v. *The Northfordshire Ry. Co.*, 16 A. D. and El. Q. B. R. New Series, p. 912 (1851). These cases are referred to in 6 C. W. N. 406. A man is entitled to damages for diminished facilities of communication and access to his other lands, *Nathar Hussain* v. *Deputy Collector Usilampatti*, 31 I. C. 259.

A Railway Company had, by the erection of certain works, occasioned a diminution of light to the plaintiff's premises, whereby they were

rendered less convenient and suitable for the requirements of his trade carried on therein. *Held*, that the diminution of light was an injurious affecting of the plaintiff's interest in the premises and that he was entitled to compensation for such diminution of light, although the saleable value of the premises was not thereby diminished, *Eagle* v. *Charing Cross Ry. Co.*, L. R. 2 C. P. 638.

A Railway Company, erected an embankment opposite the plaintiff's house, thereby narrowing the road from 50 to 30 feet, which caused much inconvenience by reason of carriages being compelled to go some distance beyond the gate before they could return, and thus materially diminishing the value of the house for selling or letting and obstructing the access of light and air to it. *Held*, that this was a permanent injury to the plaintiff's premises for which he is entitled to compensation, *Beckett* v. *Midland Ry. Co.*, L. R. 3 C. P. 82.

Loss of easement must be taken into account in assessing compensation for injurious affection, *Taylor* v. *Collector of Purnia*, 14 Cal., 423.

The word acquisition as used in sec. 23 of the Land Acquisition Act includes the "purpose" for which the land is taken as well as the actual taking. And the words "at the time" in cl. (4) of the same section must be taken to mean the time when the damage takes place and the right to compensation arises (*London and Brighton Railway Company* v. *Truman*, L. R. 11 App. Cas. 45 ; *Hopkins* v. *Great Northern Railway Company*, L. R. 2 Q. B. D., 224 : 46 L. J. (Q. B.) 205 ; *Ricket* v. *Metropolitan Railway Company*, L. R 2 E. and I. A. 175 ; and *Cowper* v. *Essex Acton Local Board*, L. R. 14 App. Cas. 153, referred to). The District Board of Dinagepore erected a bridge over the river Tulai, in consequence of which, a ferry which was within 100 cubits of the bridge and owned by the Maharaja of Dinagepore who was also the owner of the land taken for the construction of the bridge, ceased to exist. *Held*, that the owner of the ferry was entitled to compensation for the loss of the ferry, as by reason of the acquisition of the land for the construction of the bridge, the income of his other property (ferry) was injuriously affected, *Collector of Dinagepore* v. *Girija Nath Ray*, I. L. R. 25 Cal. 346.

Where a piece of claimant's land had been acquired for sewage purposes, and the question was whether he was entitled to compensation for damages sustained by reason of the injuriously affecting his other land by the exercise of the statutory powers. *Held*, that the claimant was entitled to compensation on the ground that the contemplated or the intended use of the land for the purpose for which it was taken caused a depreciation in the value of the claimant's other land, although the sewage works might be so conducted as to cause no nuisance, *Cowper Essex* v. *Acton Local Board*, (1889) L. R. 14 App. Cas. 153. See 25 Cal., 351-352; also *Gurudas* v. *Secretary of State*, 18 C. L. J. 244. Compensation should be calculated

on the basis of what is called the principle of *re-instatement*, i. e. the cost of restoring the owner to his previous position should not be lost sight of, see *Baroda Prosad* v. *Secretary of State*, 25 C. W. N. 677.

"*Earnings.*"—Any probable diminution in the value of the claimant's good-will in his trade upon the acquisition of his premises in which such trade is carried on and the consequent loss in his earnings would come within the meaning of the word "earnings." The loss in the earnings depends upon the nature of the business. If it is of a wholesale character the loss in the earnings consequent on a removal would be very small. If convenient premises can be secured in the neighbourhood of the premises acquired, the loss would be nominal. But if the business be retail, depending on neighbouring customers, and no suitable premises in the locality can be available the loss may be great, *White* v. *Commissioners of Public Works*, 22 L. T. 591. The loss of earnings, owing to the acquisition of a favourable locality, is to be calculated on the basis of what would be the earnings if the trade or occupation were pursued at the particular locality without any allowance for the possible earnings from the new habitation, *Vankatacharier* v. *Divisional Officer Tinnevelly*, (1912) M. W. N. 460=14 I. C. 625.

The compulsory change of a place of business, may result in a serious loss to the persons concerned. Locality often possesses an element of convenience, which has an important value in connection with business, and, if a person enjoys such special advantage through having established himself in a particular site, it may be for a long period, it seems to be reasonable that he should be entitled to compensation when he is disturbed for the benefit of the general public. See the *Proceedings in the Council.*

Clause (5).—Reasonable expenses incidental to change of residence.

This clause lays down the rule that if in consequence of the acquisition, the owner of the land is compelled to change his residence or the place of his business, and to take up land or house at an increased rental, or if he is obliged to incur expenses for the removal of his goods and furnitures, then he will be entitled to get compensation on that account. See however sec. 557 (e) of the Calcutta Municipal Act III. of 1899, B. C. Cf. *Jubb* v. *Hall Dock Co*, 9 Q. B. 443; *Rickets* v. *Metropolitan Ry. Co.*, 34 L. J. Q. B. at p. 261.

Clause (6).—Damage resulting from diminution of profits of land.

This clause lays down the rule that if between the time of the publication of the declaration and the actual taking possession of the land by the Collector, the owner's profit is diminished, either on account of his tenants leaving the land or on account of its remaining unoccupied, then he (owner) can claim compensation resulting from such diminution of his profits.

Ordinarily, no compensation should be awarded on account of delay between the date of the notification and the actual acquisition of the land, but where damage is actually sustained by reason of such delay, it should be awarded, *Johnson* v. *Secretary of State*, 60 P. R. 191=42 I. C. 905.

Damages to which a claimant may equitably be entitled should also be allowed. For instance, where an owner was deprived of facilities for irrigation in respect of a piece of land by wrongful act of a Municipal Corporation and the Corporation afterwards acquired the land, damages were held to be payable to him for the deprivation of his water-rights in respect of his land, *Gopala Char'ar* v. *Deputy Collector of Madras*, 22 I. C., 306 (Mad.) When an owner suffers damages by reason of arbitrary proceedings not taken in accordance with L. A. Act, additional compensation should be allowed and assessed on the basis of the loss of annual profits, 12 C. L. J. 56=6 I. C. 343.

Sub-Section (2).

In consideration of the compulsory nature of the acquisition, the Court shall in every case, award a sum of 15 per cent. in addition to the market-value of the land under sec. 23 (1) and not on the sum allowed under any other clause of this section, that is, the additional compensation of 15 per cent. is to be calculated on the market-value of the land and not on the total amount awarded under clauses 2 to 6, *In re Esufali Salabhai*, 10 Bom. L. R. 994.

When land is acquired with trees on it, the 15 per cent. ought to be calculated on the value of both, *Sub-Collector of Godavari* v. *Seragam Subbaroyadu*, 30 Mad., 151 : 1 M. L. T. 551. This 15 P. C. must be paid before the Collector's title can become perfect, *Secretary of State* v. *S. Mudaliar*, 16 Mad. 369 (P. C.)=20 I. A. 80.

Matters to be neglected in determining compensation.

24. But the Court shall not take into consideration—

first, the degree of urgency which has led to the acquisition ;

secondly, any disinclination of the person interested to part with the land acquired ;

thirdly, any damage sustained by him which, if caused by a private person, would not render such person liable to a suit ;

fourthly, any damage which is likely to be caused to the land acquired, after the date of the

publication of the declaration under section 6, by or in consequence of the use to which it will be put ;

fifthly, any increase to the value of the land acquired likely to accrue from the use to which it will be put when acquired ;

sixthly, any increase to the value of the other land of the person interested likely to accrue from the use to which the land acquired will be put ; or,

seventhly, any outlay or improvements on, or disposal of, the land acquired, commenced, made or effected without the sanction of the Collector after the date of the publication of the declaration under section 6.

NOTES.

This section mentions seven matters that are not to be taken into consideration in determining the compensation to be awarded; *viz.*

(I) The degree of urgency which has led to the acquisition, that is, the Courts will not take into consideration the urgent necessity for which the land is required. No additional compensation other than the market-value of the lands is to be awarded, simply because the land is required to be taken for some urgent or immediate necessity and for that reason no special value except the market-value is to be awarded. Cf. 19 P. W. 1913 =57 P. R. 1913=17 I. C. 764.

(II) Any disinclination of the owner to part with the land is not to be taken into consideration in determining the amount of compensation to be awarded, that is, the Court will not award any additional compensation except the market-value, simply because, the owner is not willing to part with his land. "It is an Act authorising the Local Government to make compulsory acquisition of land for public purposes or for companies. In making the acquisition the wishes of the owner of the land are wholly irrelevant under the Act. It does not contain any provision for any objection on the part of the owner to the acquisition itself. All his objections are limited to the amount of compensation and matters connected therewith, such as measurement and area," *Ezra* v. *Secretary of*

State, 30 Cal., 36, p. 74 : 7 C. W. N. 249. The Court will not award any additional compensation other than the market-value of the land, because the owner is unwilling to part with his property or that he has some grievance of social or religious character.

"As to the award of Rs. 700 for severance, the claimant is not entitled to get any thing on that account. The claim is put forward on the ground that the employment of a half-time Brahman-cook would be necessary for the service of the temple. Upon the evidence in the case, no such necessity is made out, and the grievance that offerings to the idols in the temple would have to be carried through the public street and would thereby lose their religious efficacy is too sentimental to admit of any compensation being awarded for it." *Collector of Poona* v. *Kashinath Khasgiwala*, 10 Bom. 585, p. 591.

(III) In determining the amount of compensation to be awardad the Court will not take into consideration any damage sustained by the owner which if caused by a private person, would not render such person liable to suit. The Court will not award any additional compensation over and above the market-value of the land on account of any trifling inconveniences caused during the progress of the works, if for such inconveniences a private person cannot be made liable for damages in a suit. The Court will not award any compensation for any wrong which is not actionable.

Mere personal inconvenience is not sufficient to entitle a claimant to compensation, the damage must be to the l nd itself and such as would have been the subject of an action at law, *Ricket* v. *Metropolitan Railway Co*, L. R. 2 H. L. 175, where Lord Cranworth said :—"Both principle and authority seem to me to shew that no case comes within the purview of the Statute, unless where some damage has been caused to the land itself, in respect of which, but for the Statute, the complaining party might have maintained an action. The injury must be actual injury to the land itself, as by loosening the foundations of the buildings on it, obstructing its light, making it inaccessible by lowering or raising the ground in front of it, or by some such physical deterioration."

(IV) In determining the amount of compensatious to be awarded, the Court will not take into consideration any increase to the value of the land acquired likely to accrue from the use to which it will be put. That points to the time when the land is required as the time for ascertaining its value. Independently of that provision it would lead to very strange and capricious results if changes in the condition of the land between the time when it was taken and the actual conclusion of the award were to increase or lesson its value. The time of awarding compensation must be construed as meaning the time of compensation, the time at which the right to compensation attaches, *Munmotha Nath Mitter* v. *Secretary of State*, 25 Cal. 194, P. C.: 1 C. W. N. 698. P. C.: L. R. 24 I. A. 177. No

compensation should be awarded on account of delay between the date of the notification and the actual acquisition of the land where no damage is shown to have been sustained on account of the delay, *Johnston* v. *Secretary of State*, 60 P. R. 1917=42 I. C. 905.

The amount of compensation to be awarded is to be determined with reference to the market-value of the land in view of the use, which it might, at the best, be ordinarily put to, at the time of the publication of the declaration of its intended acquisition, and any probable increase of the value of the land, in future, which might accrue from the use to which the land is to be put after its acquisition, must not be taken into consideration in assessing such compensation, *Zulfikar Khan* v. *Collector of Mianwali*, 90 P. R. (1905): 49 P. L. R. 1906. The Court should not take into consideratian a speculative rise in price during the period of delay in the publication of notification under s. 6. *Farman Shah* v. *Secretary of State*, 63 P. R. 1907.

"We have so altered cl. (4), sec. 24 of the Bill, as to make it quite clear that we exclude from compensation only a possible depreciation of the acquired land itself from the use to which it will be put; that is to say, if garden lands are appropriated for a latrine, the owner will get compensation as for garden lands without reference to, the lower value they will consequently have." *See the Report of the Select Committee, dated 23rd March 1893.*

(V) In determining the amount of compensation to be awarded for land acquired under this Act, the Court will not take into consideration any increase to the value of land acquired likely to accrue from the use to which it will be put to when acquired. The valuation ought to be made as at the time when the land is about to be taken, and should be made of the exact interest which the claimant would at that moment have assuming that the land had not been taken, *Secretary of State* v. *Basawa Singh*, 17 I. C. 764 : 57 P. R. 1913 : 19 P. W. R : 1913.

Compensation should be ascertained with reference to the market-value of the land at the date of the declaration and not with reference to any rise in value which is afterwards likely to accrue from the use to which the land will be put when acquired, *Secretary of State* v. *Charlesworth Pilling & Co.*, I. L. R. 26 Bom. I. P. C. : 5 C. W. N. 35n. and 138n. : L. R. 28 I. A. 121. Cf : *Werwicke* v. *Secretary of State*, 13 C. W. N. 1046= 2 I. C. 562 (Per Richardson J.) The question of the value of a land does not depend on the result of the acquisition, *Umar Bakhsh* v. *Secretary of State*, 46 I. C. 906.

(VI) The distinction between this clause and clause V is that clause (5) refers to the increase to the value of the land acquired, and this clause refers to the value of the other land of the person interested in the land already acquired.

(VII) In determining the amount of compensation to be paid for land acquired, the Court will not take into consideration, any expenditure or improvements made after the publication of the declaration under sec. 6 of this Act, unless such expenditure or improvement is made with the previous sanction of the Collector, that is to say, a claimant will not be entitled to any compensation on account of any expenditure or improvement made by him after the publication of the declaration of the intended acquisition unless such expenditure has been sanctioned by the Collector.

A claim which is not barred by any of the aforesaid seven clauses of this section and which can be shown to be really just and equitable should duly be considered and estimated, *Johnston* v. *Secretary of State*, 60 P. R. 1917=42 I. C. 905.

Rules as to amount of compensation.

25. (1) When the applicant has made a claim to compensation, pursuant to any notice given under section 9, the amount awarded to him by the Court shall not exceed the amount so claimed or be less than the amount awarded by the Collector under section 11.

(2) When the applicant has refused to make such claim or has omitted without sufficient reason (to be allowed by the Judge) to make such claim, the amount awarded by the Court shall in no case exceed the amount awarded by the Collector.

(3) When the applicant has omitted for a sufficient reason (to be allowed by the Judge) to make such claim, the amount awarded to him by the Court shall not be less than, and may exceed, the amount awarded by the Collector.

NOTES.

This selection lays down three rules as to the amount of compensation to be awarded by the Court on a reference under sec. 18.

(*a*) when the applicant has made a claim to compensation, after issue of notice under sec. 9, then the amount awarded to him by the Court must not exceed the amount claimed by him, nor be less than the amount awarded by the Collector.

(*b*) when the applicant has refused or omitted, without sufficient reason to make a claim, then the amount of compensation awarded by the Court must not in any case exceed the amount awarded by the

Collector; See *Secretary of State* v. *Gobind Lal*, 12 C. W. N. 263; *Secretary of State* v. *Bishan Dat*, 33 All., 376 s. c. 8 A. L. J. 115: 9 I. C. 423 *Ramprosad* v. *Collector of Aligarh*, 40 I. C. 274; *In re Merwanji Cama*, 9 Bom. L. R. 1232.

(c) When the applicant, for sufficient reason has omitted to make a claim, then the amount awarded by the Court may exceed the amount awarded by the Collector but must not be less than that amount; Cf. *Gyanendranath* v. *Secretary of State*, 25 C. W. N. 71.

The words "the amount so claimed" in Sub-section (1) means the *total* amount and not the claim under any *particular* head or item. The claimant cannot be expected to classify the heads of his claim very correctly and can not be penalised for wrongly estimating the separate items of his claim. The section only bars the enhancement only of the *total* amount claimed, *Indo Burma Petroleum Co.* v. *Collector of Yenangyaung*, 12 I. C. 202. Similarly under Sub-section (3) the Court cannot reduce the *total* amount of the Collector's award, though he can reduce and vary particular items; *Gangadhara* v. *Deputy Collector of Madras*, 22 M. L. J. 379=(1912) M. W. N. 712=11 M. L. T. 327=14 I. C. 270 Though the L. A. Court cannot reduce the Collector's award, still he can uphold an award on the whole notwithstanding the fact the Collector has made an overvaluation in some respects and an undervaluation in other respects and that the effect of maintaining the Collector's award is to reduce the overvalued items, *Johnston* v. *Secretary of State*, 60 P. R. 1917, s. c. 42 I. C. 905. When the claimant does not put in his objections under sec. 9 nor does show any sufficient reason for not filing such objections, the Court cannot interfere with the award of the Collector, *Narain Dutt* v. *Superintendent of Dehra Dun*, 37 All. 69=12 A. L. J. 1319=26 I. C. 795. Where a claimant objected to the amount of compensation offered by the Collector, but withdrew his objection before the Judge, who however, allowed an increased amount at the instance of the other objectors. *Held*, that under sec 25 of this Act, the former did not disentitle himself from the benefit of the increased amount awarded by the Judge at the instance of the other claimants, *Nobin Chandra Surma* v. *Deputy Commissioner of Sylhet*, 1 C. W. N. 562. Private negotiations with the Government, in which tempting offers were made are not *sufficient reason* within the meaning of sub-sec (3) to justify an omission to make a claim, *Ibid.*

An award should not be interferred with unless substantially erroneous, *Improvement Trust, Bombay* v. *Karsondas*, 33 Bom., 28=10 Bom. L. R. 688=1 I. C. 451.

The Court would be slow to differ from the Collector's offer on a matter of a few rupees except for very strong reasons such as an error or a question of principle, *Government of Bombay* v. *Karim Tar Mahomed*, 33 Bom., 325=10 Bom. L. R. 660=3 I. C. 273.

26 (1) Every award under this Part shall be in writing signed by the Judge, and shall specify the amount awarded under clause *first* of sub-section (1) of section 23, and also the amounts (if any) respectively awarded under each of the other clauses of the same sub-section, together with the grounds of awarding each of the said amounts.

Form of awards.

(2) *Every such award shall be deemed to be a decree and the statement of the grounds of every such award a judgment within the meaning of section 2, clause (2) and section 2, clause (9) respectively of the Code of Civil Procedure, 1908.*

NOTES.

The award of the Judge shall specify separately the amount awarded under the first clause of sec. 23, that is, amount awarded on account of the market value of the land, and also the amounts respectively awarded under other clauses of that section, because the statutory allowance of 15 per cent. under sub-sec. (2) of that section is to be calculated on the market-value only.

In cases under the L. A. Act, the decree awarded in appeal must be limited to the amount for which Court-fee has been paid on the memorandum of appeal, *Mahomed Ali* v. *Secretary of State*, 30 Cal, 501.

Sub-sec. (2): This sub-section is new and has been added by the Land Acquisition (Amendment) Act, (Act XIX of 1921). The effect of this subsection is to make an award under Part III of the Act a decree, and the statement of the reasons for such an award a Judgment within the meaning of sec. 2, cls. (2) and (9) of the C. P. Code. Note that this Sub-section is confined to awards under Part III only.

An award under sec. 26 or sec. 30 of the L. A. Act, is tantamount to a decree within the meaning of sec. 2 of the C. P. Code, though called an award in the Act. Such an award is a decree capable of execution and the same is the case with a decree passed in appeal and the principle of restitution laid down sec. 144 of C. P. Code, is applicable, *Zemindars of Dhar* v. *Rána*, 53 P. R. 1906 : 103 P. L. R. 1906.

27. (1) Every such award shall also state the amount of costs incurred in the proceedings under this Part, and by what persons and in what proportions they are to be paid.

Costs.

(2) When the award of the Collector is not upheld, the costs shall ordinarily be paid by the Collector, unless the Court shall be of opinion that the claim of the applicant was so extravagant or that he was so negligent in putting his case before the Collector that some deduction from his costs should be made or that he should pay a part of the Collector's costs.

NOTES.

Under sec. 19 of the Court-Fees Act, VII of 1870, a petition of claim under the Land Acquisition Act, is exempt from stamp duty. The costs referred to in this section are process fees, expenses of witnesses to enforce their attendance and pleader's fees. Cf. 31 Mad., 328.

The High Court has framed the following rules for **pleader's fees** under Cl. (c) of sec. 27 of the Legal Practitioners Act, XVIII of 1879, to be found at pages 142 and 143, Chapter VI of H. C. Circular Order, Vol. I of 1903.

"In this and the following rules, cases under Part III of the L. A. Act, 1894, shall be deemed to be suits, and the fees allowable therein may be calculated either on the amonnt of compensation decreed in excess of the sum tendered by the Collector, or on any smaller amount which the Court in its discretion may think proper. In the event of the sum tendered by the Coll‿ctor being decreed, pleader's fees may be awarded to Government on the difference between that sum and the sum claimed, or any smaller amount which the Court in its discretion may think proper: Provided that, in any case in which the remuneration under the above rules shall, in the opinion of the Judge, prove to be insufficient, or in any case not provided for, he shall be at liberty to allow pleader's fees as in miscellaneous cases under Rule 42."

"We are of opinion that when the Judge finds a Collector's award to have been inadequate, the Collector should ordinarily pay the costs of the reference, but we have inserted the clause giving discretion to the Court to give the Collector part of his costs whenever the claim of the objector proves to be extravagant." *Select Committee's Report, dated 2nd February, 1893.*

Also see the cases at p. 55 *ante*.

"In sec. 27 we have widened the discretion of the Judge in the apportionment of costs, to meet an objection pressed by the Lieutenant-Governor of Bengal It is represented that the owners of land frequently suppress the evidence as to the value of their property, which is their duty to adduce before the Collector, hoping to employ it to greater advantage before the Judge. We have now given express power to the Judge to give effect to this consideration in his award of costs when he is of opinion that the evidence given before him has been wilfully kept back in the proceedings before the Collector, *Select Committee's Report, dated 22nd March 1893.*

No appeal lies on a question of costs in a case under the Land Acquisition Act, *Bamasoondereee Dassee* v. *Vernmi*, 13 B. L R. 189; 22 W. R 136. For a contrary view see *Ekambora Gramany* v. *Muni Swamy Gramany*, 31 Mad. 328, in which it has been maintained that as costs are part and parcel of an award, and as under sec. 54, an appeal lies against any part of the award, therefore necessarily an appeal will lie in a matter of costs.

Collector may be directed to pay interest on excess compensation.

28. If the sum which, in the opinion of the Court, the Collector ought to have awarded as compensation is in excess of the sum which the Collector did award as compensation, the award of the Court may direct that the Collector shall pay interest on such excess at the rate of six per centum per annum from the date on which he took possession of the land to the date of payment of such excess into Court.

NOTES.

If the sum awarded by the Court exceeds the sum awarded by the Collector as compensation, then the Court may direct the Collector to pay interest at six percent. per annum, on the difference, see, *Rangasami Chetty* v. *Collector of Coimbatore*, 7 M. L T. 78=51. I. C. 744. But when the amount of such compensation is neither paid nor deposited by the Collector under sec. 34 of the Act, he shall pay the amount awarded with interest thereon at 6 per cent. per annum *from the time of his taking possession* of the land until it shall have been so paid or deposited. See *Ram Saran Das* v. *Collector of Lahore*, 9 I. C. 228=9 P. W. R. 1911. Interest under this section. Should always be allowed unless there is special reason to the contrary, *Ram Prasad* v.

Collector of Aligarh, 40 I. C. 274 By sec. 53 of this Act, the provisions of the Code of Civil Procedure have been made applicable to all proceedings before the Court under this Act, and under sec. 35(3) of the C. P. Code, the Court has power to award interests on costs.

This section does not say anything as to interest for the reverse case, e. g. when the Court's award is reduced in appeal at the instance of the Secretary of State. In such a case, it seems, the claimant who is overpaid is bound to refund the excess amount to the Collector with interest, see *Collector of Ahmedabad* v. *Lavji*, 35 Bom. 255=13 Bom. L R. 259=10 I. C. 818.

PART IV.

APPORTIONMENT OF COMPENSATION.

Particulars of apportionment to be specified.

29. Where there are several persons interested, if such persons agree in the apportionment of the compensation, the particulars of such apportionment shall be specified in the award, and as between such persons the award shall be conclusive evidence of the correctness of the apportionment.

NOTES.

The apportionment of compensation is a proceeding distinct from that of settling the amount of compensation under the previous provisions of the Act, and any dispute as to the apportionment is only decided as between those persons who are actually before the Court. A separate notice therefore of the apportionment proceedings is requisite to bind any person by those proceedings, and when such a notice has not been served, any party interested, although served, with notice of the proceedings for settling the amount of the compensation cannot be considered a party to the proceedings for apportioning it; and is not barred by the decision in the latter proceedings from bringing a suit to recover a share of money so apportioned, *Hurmut Jan Bibi* v. *Padma Lochun Dass*, 12 Cal. 33. Where no objection is taken under sec. 18 by a person interested, against the apportionment of the compensation money, the Collector's award is conclusive as against him, *L. A. Officer, Karachi* v. *Lakhmibai*, 11 I. C. 304.

Dispute as to apportionment.

30. When the amount of compensation has been settled under section 11, if any dispute arises as to the apportionment of the same or any part thereof, or as to the persons to whom the same or any part thereof is payable, the Collector may refer such dispute to the decision of the Court.

NOTES.

Distinction between reference under Sec. 18 and that under Sec. 30.--The distinction between references under these respective sections is that the reference under this section is made on the question of title by the Acquisition officer *of his own motion* whilst that under sec. 18 is made on the application of persons interested in the compensation money and not by the acquiring officer on his own motion, *Rajagopala* v. *Singaravelu*, 53 I. C. 589=97 P. R. 1919. "It will be seen that one who objects to the Collector's award has an absolute right, under sec. 18, to have the matter referred to the Court, and that what this section intends to do merely is to enable the Collector himself in certain very difficult cases to refer the question to the Court of his own motion; but *nothing will prevent any of the parties who choose to go to the Court, from* doing so. (*Vide post*). This section allows the Collector to decide if he can, whilst it gives him an opportunity of shifting the decision to the Court, and also leaves the parties themselves free to go into Court if they are dissatisfied with the Collector's apportionment." *See the Proceedings in the Council.* A district Munsiff has inherent jurisdiction to try a suit for determining the rights to money awarded as compensation under the L. A. Act. When both the parties agree to such a trial, one cannot question the jurisdiction of the Court at a later stage, *Pichuvier* v. *Perumal Konan*, (1912) M. W. N. 163=13 I. C. 651. An additional Judge can hear a reference under this section, *Jagabandhu* v. *Nanda Lal*, 50 I. C. 798. In hearing a reference in the matter of apportionment, the Court should restrict its enquiry to the case of the party who considers himself aggrieved and obtains the reference. The party who has raised no objection to the apportionment made by the Collector must be taken to have accepted the award and the scope of enquiry cannot be enlarged, nor can the award be varied at his instance, *Bejoy Chand Mahatap* v. *P. K. Mozumdar* 13 C. L. J. 159=9 I. C. 582; *Abu Bakar* v. *Peary Mohan Mookerjee*, 34 Cal. 451; *Promotha Nath* v. *Rakhal Das*, 11 C. L. J. 420. Also *L. A. Officer, Karachi* v. *Lakhmibai*, 11 I. C. 304. But the rule is inapplicable to a case

where the scope and object of reference obtained by the aggrieved party was not to settle the question of apportionment as between himself and the other party who had raised no objection but merely to obtain a final benefit for both; see *Bejoy Chand* v. *P. K. Mozumdar*, 13 C. L. J. 159, s. c. 9 I. C. 582. A question under this section is one of apportionment and apportionment only, and the question whether a tenant a part of whose tenure has been acquired, should have his rent abated does not fall within the section. *Jagabundhu* v. *Nanda Lal*, 50 I. C. 798.

Principles of apportionment : There is no general rule for the purpose of apportionment; it is made by dividing the amount of compensation amongst the *persons interested* in proportion to the value of their interests. The market value of an interest, if ascertainable may afford some guide but it should be considered in relation to the total sum awarded, *In re Pestonji Jehangir*, 14 Bom. L. R. 587=15 I. C. 771.

The principle to be followed in apportioning compensation is not identical with the principle adopted in assessing it. The market value of the land acquired may be determined, on many hypothetical considerations. But the question of apportionment of the sum awarded as between the landlord and his tenant must be based not on hypothetical grounds, but on an accurate determination of the value of their respective interests in the land, *Nayan Manjuri* v. *Hem*, 32 C. L. J. 137, s. c. 58 I. C. 417.

The term "apportionment" should be given a liberal construction, as to include the case where the Court has to decide between rival claimants to the entire compensation. Where each claimant asserts an exclusive right to the whole compensation awarded, it is a dispute as to the apportionment of the compensation within the meaning of this section, *Kashim Valad* v. *Aminbi Kom and the Collector of Belgaum*, 16 Bom. 525.

Where lands are taken compulsorily the principle upon which the amount of compensation is divisible among the Zemindars and the holders of several subordinate tenures, is by ascertaining the value of the interest of each holder of a tenure and to give him a sum equivalent to the purchase-money of such interest, *Gordon Stuart and Co.* v. *Mahatab Chunder*, *Marsh* 490 : 2 Hay 565.

Where there are different interests in a land, acquired under the Act, the proper method of apportioning the compensation is to calculate the respective values of the interests and to award the compensation in proportion thereto, *Hirdey Narain* v. *M. J. Powell.* 10 A. L. J. 403=17 I. C. 672=35 All. 9.

The compensation should be divided by the parties in the ratio of their respective interests in the land, *Bhageeruth Moodee* v. *Jabur Jummah Khan*, 18 W. R. 91.

When land is taken for public purposes, the party *primâ facie* entitled to compensation is the proprietor. Any party claiming it against

him by virtue of a right created by him must prove his title to it. *Issur Chunder Banerjee*, v. *Suttyo Doyal Banerjee*, 12 W. R, 270.

When land is taken for public purposes, the party in possession at the time is *primâ facie* entitled to the money paid for it, until some one else establishes a prior claim. *Chundee Churn* v. *Bedoo Buddun*, 10 W. R. 48.

To establish a claim for apportionment, the claimant must show that he has title, or having no title deeds, must show effective occupation, *Kakkolangara* v. *Karala varma*, 6 M. L. T. 139=2 I. C. 931. A claimant can get no share of the compensation without establishing either title to or possession of the land acquired, *Satish Chandra* v. *Ananda Gopal*, 20 C. W. N. 816.

Burden of Proof: Where a party claims the compensation as a purchaser of the property at a revenue sale, whilst the other was holding it as lakhiraj, the former is in the position of a plaintiff and the burden of proof is on him, *Sri Krishna Kalyani* v. *R. Braunfield*, 20 C. W. N. 1028=36 I. C. 184.

Apportionment of compensation between zemindars and tenure-holders. The compensation is to be apportioned between such parties according to the value of the interests which each of them parts with, *Satish Chunder* v. *Raî Jatindra Nath*, 7 C. L. J. 284.

The apportionment of the compensation money between zemindar and putnidar will depend partly on the sum paid as bonus for the putni, and the relation that it bears to the probable value of the property, and partly on the amount of rent payable to the zemindar, and also the actual proceeds from the cultivating tenants or under-tenants, *Bunwari Lal* v. *Burnomoyi Dasi*, 14 Cal. 749.

When a portion of a *putni* is acquired, the *putnidar* is not only entitled to an abatement of rent at the hands of the zemindar proportionate to the land acquired, but he is also entitled to some share of the compensation money; *Lala Jyoti Prokash Nandi* v. *Jogendra Narayan*, 11 C. W. N. 52 n. (7 C. W. N. 130, followed). See also *Nagoor Rowthar* v. *Akbar Alisha*, 24 I. C. 724. But where there is no abatement of rent under the terms of the putni *patta* in respect of the land acquired, the zemindar is not entitled to any portion of the compensation money, *Biprodas Pal* v. *Surat Chandra*, 16 C. L. J. 209: See also *Raja Ram Ranjan* v. *Bunwari Lal*, 16 C. L. J. 211; *Ganpat Singh* v. *Motichand* 16 C. L. J. 301.

A putnidar is entitled to compensation on account of lands in his *putni* taken for public purposes although there was no agreement to that effect, *Joy Krishna Mookerjee* v. *Reazoonissa Beebee*, 4. W. R. 40.

Held, that the principle in the case published at page 328 of the Sudder decisions of 1860 (*vide* foot-note) to regulate compensation for land taken for public purposes is not applicable to the division of compen-

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sation in every case. It would not provide for the case of several putnis where the land is taken from the holder of the last tenure, and when the grantees of the several intermediate tenures have received a sum of money as a bonus for the grant, *Mahatab Chand* v. *Bengal Coal Company*, 10 W. R. 391.

Where land held in *putni* is taken by Government for public purposes, the proper mode of settling the rights of the parties interested, is to give the putnidar an abatement of his rent in proportion to the quantity of land which has been taken from him, and to compensate the zemindar for the loss of rent which he sustains. Accordingly the compensation awarded was held to have been very fairly distributed where the zemindar received a little more than 10 years' purchase of the rent abated and the putnidar received the remainder. When the compensation money was in deposit with the Collector without specification of shares, the putnidar's cause of action against the zemindar was held to have arisen when the former sought to obtain his share and was prevented by the latter's not joining him or enabling him to get it, *Raye Kissory Dassee* v. *Nilcant Dey*, 20 W. R. 370.

A portion of the area of two villages having been taken under the Land Acquisition Act, and compensation deposited in the Collectorate, the putnidar sued for the same contending that the zemindar was entitled to 20 times the rental payable by the durputnidar, less expenses of collection. The zemindar claimed 20 times the profits he derived from the putnidar, less revenue paid to Government. *Held* that, as the plaintiff's calculation secured to the zemindar a more favourable result than that for which the latter himself contended, it was sufficient to decree the suit without determining the proper principle on which compensation should be allowed, *Bengal Coal Co.* v. *Mahatab Chand Bahadur*, 12 W. R. 340.

In apportioning compensation between the Government and a claimant in respect of acquisition of lands in a Noabad Mehal, the interest of the former ought to be measured by capitalizing the present rent at 30 years' purchase, see *Jogesh Chandra* v. *Secretary of State*, 18 C. W. N. 531=24 I. C. 65. Though the rent for such a *mehal* is enforceable, still that would not justify the Court awarding half the compensation money to Government, as Government would not in ordinary course increase the assessment unless the assets of the property also increased. (*Ibid.*)

When a *putni* and *dur-putni* has been given of land which is afterwards acquired by Government for public purposes, the zemindar is generally speaking, entitled to as much of the compensation money, as the putnidar is. As a rule raiyats having right of occupancy in such land, and the holders of permanent interest next above the occupancy raiyats are the persons entitled to the large portion of the compensation money. The principles upon which the compensation money should be apportioned

among the different holders discussed and explained—Construction of durputni lease, *Godadhar Das v. Dhunput Singh*, 7 Cal. 585 : 9 C L. R. 227.

The mode of apportionment of compensation between landlord and tenant considered, *Dunne* v. *Nabo Krishna Mookerjee*, 17 Cal. 144, dissented from in 5 C. L. J. 662 ; *Bir Chunder* v. *Nabin Chunder*, 2 C. W. N. 453, and *Khetter Kristo v. Dinendra Narain*, 3 C. W. N. 202.

In apportioning compensation money awarded under the Land Acquisition Act, between a zemindar and a tenure-holder under him, the Court ought to proceed on the principle of ascertaining what the real interest of each party is in the property and what is the interest each party parts with. When the lease is permanent and at a fixed rent, the chances of the lease coming to an end or being forfeited being scarcely appreciable by a money payment, the interest of the landlord cannot be put higher than the fixed rent he receives, and for this he is entitled to be compensated at so many years' purchase. The tenure-holder who is the real beneficial owner in such a case is entitled to the whole of the remaining portion of the compensation money, *Kumar Dinendra Narain* v. *Titurom Mookerji*, 30 Cal. 801 : 7. C. W. N. 810 ; (1 Marsh 490 ; 20 W. R. 370 ; 7 Cal. 585 ; 17 Cal. 144 ; 3 C. W. N. 202 ; and 28 Cal. 146, considered). See also *Biprodas Pal* v. *Kumar Sarat Chunder*, 11 C. W. N. 151n.

Apportionment of compensation between zemindar and putnidar : So far as the zemindar is concerned his interest is limited in perpetuity. That interest is to receive certain amount of rent from the putnidar. So far as the putnidar is concerned, he has the rest of the interest in the land vested in him. The value of the interest of the zemindar is to be determined by capitalizing what he has lost. This is to be calculated by ascertaining the rent payable to him and deducting from it the Government revenue payable—that represents his net profit which he has lost by reason of the acquisition. *Kanai Lal Khan* v. *Midnapur Zemindary Co., Ld.*, 5 C. L. J. 48 n. (30 Cal. 801 : 7 C. W. N. 810, referred to).

Where accreted land is taken up under the L. A. Act, the compensation awarded should be divided by giving the landlord the value of the rent payable in respect thereof with 15 per cent for compulsory sale and the balance to the tenure-holder, *Chooramoney Dey* v. *Howrah Mills & Co*, 11 Cal. 696 (7 Cal. 479, commented on.)

When land is taken for Railway purposes and compensation is made which is divided between the zemindar and those holding under him, any deduction of rent claimed from the zemindar must be reckoned with reference not to the gross amount of compensation but to the proportion which passed into his hands, *Dhiraj Mahtab Chand* v. *Chittro Coomaree Bibee*, 16 W. R. 201.

In apportioning compensation between the zemindar and the *Putnidar* The chance of the *Putni* lease coming to an end by sale or forfeiture could not be valued, *Biprodas Pal* v. *Sarat Chandra*, 16 C. L. J. 209.

When the conflicting claimants to compensation are the zemindar and the vendee of the putnidar, the claim of the latter cannot be defeated simply by the fact that the latter has not got his name registered in the zemindar's sheristha by paying a fee or furnishing security, because his title is perfected by purchase alone (apart from the fulfilment of the said contingencies), *Ganpat Singh* v. *Moti Chand*. 16 C. L. J. 301.

No general rule can be laid down as to the tenure and rights of persons called "*Ulkudi Sukhanais*," or "*payakans*," but when land is taken under the Land Acquisition Act, they are clearly entitled to a proportion of the compensation granted. In ascertaining the proportionate interest of the *mirasdar ulkudi* tenant, allowance must be made for the *mirasdar's* reversionary right, and when the rights of the parties are calculated on the basis of the value of the produce, allowance must be made for the expenses of cultivation, *Appasami Mudali* v. *Rungappa Nattan*, 4 Mad. 367, followed in *Sri Raja Bommadevara* v. *Atmuri*, 31 Mad. 395=25 M. L. J. 17=12 I. C. 436=(1911) 2 M. W. N. 401=10 M. L. T. 349.

Apportionment of compensation between landlords and raiyats : Where there are distinct interests in the land, compensation must be awarded in respect of all the interests and not in respect of one alone, *Hotha Virabhadrayya* v. *Revenue Divisional Officer*, 29 I. C. 8.

Where there is a lease containing a covenant that upon acquisition the whole of the compensation for the land should belong to the landlord alone, the Court should give effect to it as a valid and enforceable contract, *Gadadhar Bhatta* v. *Lalit Kumar*, 10 C. L. J. 476.

The power reserved by the lease to the lessees of removing their improvements at the termination of the lease has been taken away by the *vis major* of the proceeding under L. A. Act, *Jogendra Chundra* v. *Rajendra Nath* 13 C. L. J. 262.

As a rule rayiats having a right of occupancy in the land acquired under the Land Acquisition Act, and the holders of the permanent interest above the occupancy raiyats are the persons entitled to the large portion of the compensation money. The principles on which compensation money should be apportioned among the different holders discussed. *Dunne* v. *Nobo Krishna* 17 Cal. 144, dissented from in 5 C. L. J. 662 ; *Bir Chunder* v. *Nabin Chunder*, 2 C. W. N. 453 ; and *Khettro Kristo* v. *Devendra Narain*, 3 C. W. N. 202. As to the right of an occupancy raiyat to compensation, see *Shaikh Hursat* v. *Jogat Narain*, 11 C. W. N. 312n.

In apportioning compensation money between a landlord and tenant, the principle to be followed is to ascertain first the amount of rent payable to the landlord and capitalize that rent at so many years' purchase, then

to put a money value upon the chance, (if there be any) of enhancement of the then existing rent. These two sums the landlord is entitled to get and the tenant is entitled to get the balance, *Shama Prosnna* v. *Breekoda Sundari*, 28 Cal. 146, referred to in 30 Cal., 801=7 C. W. N. 810. So it follows that where the tenant's rent is fixed in perpetuity, the landlord will get only the capitalised value thereof : *Manmohan* v. *Collector of Chittagong*, 40 Cal., 64=17 C. L. J. 61=17 C. W. N. 1001=18 I. C. 551.

In assessing the amount of compensation due to the landlord regard must be had to the question of how much he is actually realising from the land and he will be entitled to a capitalisation thereof. It will make no difference if the Government is the landlord, *Manmohan* v. *Collector of Chittagong*. 40 Cal. 64. 17 C. L. J. 61=18 I. C. 551. Where the landlord's interest is limited to such a small quit rent that apportionment is impracticable, the Court may refuse to give any thing to him, see *Cheria Pangy* v. *Krishna Pattai*, 28 I. C. 8.

In a case of apportionment between landlord and tenant raising a question of the permanency of the tenancy (if subject to Bengal Tenancy Act), the presumption of Sec. 50 of B. T. Act may be availed of, *Nunda Lal* v. *Atarmoni*, 12 C. W. N. 432. Mere continuity of possession for sometime, payment of a uniform rate of rent, alienation by the tenant behind the back and without the knowledge of the landlords are not sufficient to establish a claim to occupancy. *Ponniah Nandan* v. *Deivanai*, 52 I. C. 247 : 36 M. L. J. 463=9 L. W. 453 ; 26 M. L. T. 311.

In a case of apportionment between the landlord and the tenant, the landlord's share may be obtained by deducting from the market value of the whole land the value of the tenant's interest, *Rajah of Pittapuram* v. *Revenue Divisional Officer*, *Cocanda*, 42 Mad. 644, s. c. 36 M. L. J. 455 : 51 I. C. 656.

If the rent payable by an occupancy raiyat is enhancible, the landlord is entitled to some thing for that chance of enhancement, but that again is difficult to estimate by a money value, *Bhupati Roy* v. *Secretary of State*, 5 C. L. J. 662 (17 Cal. 144, dissented from); See also 30 Cal., 801 : 7 C. W. N. 810.

For the purposes of the Land Acquisition Act, a lessee of a tank is in the same position as a yearly tenant of agricultural land. He is a person interested within the meaning of sec. 23 of the Act and is entitled to compensation, *Narain Chandra Boral* v. *Secretary of State*, 28 Cal. 152 : 5 C. W. N. 349.

The difference, in a question of principle of distribution of compensation between the raiyat with rights of occupancy and a non-occupancy raiyat, is not great. The liability of a non-occupancy raiyat to enhancement of rent is larger than in the case of an occupancy raiyat, while there are grounds upon which non-occupancy raiyats may be liable to ejectment

which do not apply to occupancy raiyats. These matters ought to be taken into consideration in apportioning the compensation, *R. Mitter* v. *Annukul Chunder*, 9 C. W. N. 332n, 2 C. L. J. 8n.

The proprietor, the tenant and the under-tenant, claimed the compensation awarded by the Deputy Collector. The Subordinate Judge divided the compensation money in this way, that is to say, he gave to the proprietor 40 times the rent payable to him and 40 times that rent for the chance of enhancement, and he assigned the balance to the tenant and the under-tenant. The tenant appealed and contended that he was not a mere occupancy raiyat, but a permanent tenure-holder owing to his long occupancy of the land at a uniform rent and also having erected pucca buildings on a portion of the land. *Held*, that when the origin of the tenancy is proved and when it is clear that the lease originally granted to the tenant was a cultivating lease, there is no ground for the inference that the tenure was of a permanent nature. *Held*, further, that the proprietor will be allowed 30 years' purchase of the capitalized value of the rent and 30 years for the chance of enhancement, *Preo Nath Chattreji*, v. *Bhuban Mohini Dassi*, 10 C. W. N. 76n.

As to the mode of apportionment between the landlord and the occupancy tenant, see *Hardy Narain* v. *Mrs. Powell*, 13 I. C. 420. The occupancy tenant is usually allowed compensation with reference to the question whether the occupancy right is transferable or not. *Ambica Nath* v. *Aditya Nath*, 6 C. W. N. 624 at p. 627. As to principle of compensation in a case where the lessee is entitled to remove the improvements made by him, see *Jogendra* v. *Rajendra*, 13 C. L. J. 262. Where a tenant, whose tenancy is determined, has a building on the land which he is entitled to remove, he will be entitled to a share of the compensation on account of the building, *Kanai Lal* v. *Rasik Lal*, 19 C. W. N. 361.

When an apportionment case is referred to Court on the application of the landlord, the tenant cannot dispute the Collector's award before Court, *Maharali* v. *Mushtak Singh*, 25 I. C. 803, s. c. 8 S. L. R. 18.

Right of a tenant-at-will to claim compensation. The tenancy of a tenant-at-will has practically no market-value, he is therefore entitled only to the price of the huts erected by him, *Secretary of State* v. *Belchambers*, 33 Cal. 396 : 10 C. W. N. 289 : 3 C. L. J. 169. But in localities where interests of tenants-at-will are frequently sold and purchased for substantial prices, the mere precariousness of the tenant's title or his liability to ejectment at the option of the landlord will not negative his claim for the market value of his interest, because the question of market value is always determined with reference to actual *commercial* value rather than to *abstract* legal rights, *Sadhu Charan* v. *Secretary of State*, 31 C. L. J. 63 (66) s. c. *Girish Chandra* v. *Secretary of State*, 24 C. W. N. 184=55 I. C. 150.

The tenants from year to year in respect of such land are entitled to have their share of the compensation apportioned; *Ponniah Nadan* v. *Dei Vanai Ammal*, 52 I. C. 247 : 36 M. L. J. 463=9 L. W. 453=26 M. L. T. 311.

Licensee : A licensee has no interest in the land and therefore not entitled to any portion of the compensation, *Sankar Gov'nt* v. *Kisan* 45 I. C. 554.

Right of under-raiyat to claim compensation. An under-raiyat is not a "person interested" in the land within the meaning of sec. 23 of this Act and is therefore not entitled to any portion of the compensation money, *Shaikh Hasrat* v. *Jagat Narain Roy*, 11 C. W. N. (S. N.) cccxii (312).

Compensation was awarded for land acquired and for value of trees thereon. The under-raiyat proved that the trees had been planted by him and he claimed the whole of the amount awarded for the trees. *Held*, that although the under-raiyat had planted the trees, the property in them belonged to the landlord, and that the under-raiyat was sufficiently compensated for the loss of the enjoyment of the trees by the award of half the compensation to him, *Hara Gopal Singh* v. *Abu Bakkar*, 3 C. L. J. 36n., see also *Abu Baker* v. *Peary Mohan*, 34 Cal., 451.

Right of zemindar to compensation in ghatwali lands. A zeminder of Ghatwali lands is entitled to a share in the compensation in retaining, under Reg. XXIX of 1814, an interest in such lands. *Bhageerath Moodee* v. *Jabur Jumma*, 18 W. R. 91. Where land forming part of a Ghatwali tenure in the district of Birbhoom was taken up for public purposes. *Held*, that neither the zemindar nor the under-tenants of the Ghatwali could claim a proportionate share in the compensation money payable for such land. The money so obtained carries with it all the incidents of the original ghatwali tenure, and the ghatwal for the time being is entitled only to the interest accruing therefrom during his life-time; *Ram Chunder Singh* v. *Rajah Johor Jumma Khan*, 14 B. L. R. Ap. 7 : 23 W. R. 376.

Right of zemindar to compensation for stoppage of a ferry by construction of a bridge near it. The mere construction of a Railway bridge across a river, whereby the profits of a ferry are reduced, does not entitle the owner to claim damages; but when lands on both banks of the river which were used as landing places for the ferry, were acquired for the purpose of a railway bridge, and the access to the river and with it the exercise of the franchise was destroyed, the owner was entitled to compensation. The value of a ferry ought not to be determined by ascertaining the average profits at the date of the acquisition by regarding it as an invariable quantity and by taking a number of years' purchase. The damages ought to be calculated on the basis of the average profits from the ferry. *Rameswar Singh* v. *Secretary of State*, 34 Cal. 470 : 11 C. W. N.

459 : 5 C. L. J. 669. (*Hopkins* v. *Great Northern Railway Co.*, (1877) 2 Q. B. D. 224 ; *Moses* v. *Samford*, (1883) 79 Tennessee 731 ; and *Collector of Dinagepore* v. *Girija Nath Roy*, I. L. R. 25 Cal. 345, referred to.)

Right of zemindar to claim compensation in respect of land not expressly dedicated but used by the public as a burning ground. A dispute as to the apportionment of compensation arose between the Chairman of the Howrah Municipality and the Raja of Andul. The Municipality claimed the whole of the compensation on the ground that the place had been maintained by the Commissioners as a burning ground ever since 1864, that it was vested in them under the provisions of the Bengal-Municipal Act and that they have acquired an indefeasible title to it by adverse possession. The Raja claimed the compensation for the land to which he set up a lakhiraj title, and which he alleged had been allowed by his predecessors to be used as a burning ground by the public ; he also claimed compensation for the buildings which he stated had been erected by his predecessors and repaired at his expense. *Held*, that the burning ground was a *ghat* within sec. 30 of the Municipal Act, the user of the property, but not the ownership in it vested in the Municipality ; that the Raja was entitled to the compensation awarded for the land and the structures and was entitled to get the value of the material of the *ghat* as also of the platform erected by them. The determination of the question, who are the persons to whom the amount of compensation awarded for acquisition of land is payable depends upon the ascertainment of the rights and interests of the several claimants to the property at the time of its acquisition. There is a substantial distinction between cases in which the question, of the principle of valuation of land acquired when it is subject to restrictions as to use arises and those in which is raised the question as to the principle upon which compensation when it has been awarded for land subject to restrictions as to use, has to be apportioned amongst persons interested in the property. The principles of valuation of such lands and of apportionment of compensation awarded for it discussed. *The Chairman of Howrah Municipality* v. *Khetra Kisto Mitter*, 4 C. L. J. 343 : 10 C. W. N. 1044 : 33 Cal. 1290. (25 Cal. 194, P. C. : 1. C. W. N. 698, P. C., distinguished).

Right of zemindar to compensation for lands granted for building purposes. It was held that, assuming that possession of certain plots of land had been granted by the zemindars to persons to build thereon, and to hold so long as the buildings subsisted, the zemindars being only entitled to a reversionary interest in the land contingent on the owner of the buildings allowing them to fall into ruin, the owner of the buildings would be entitled to the bulk of any compensation awarded under the provisions of the Land Acquisition Act in respect of the sites, *Gur Purshad* v. *Umrao Singh*, 7 N. W. P. R. 218.

A plot of land was acquired for the construction of a road in Calcutta; the tenants who had erected masonry buildings on portions of the land and who were in possession at the time of the acquisition, claimed the value of their interest; but the owner of the land claimed the whole of the compensation money. *Held*, that the tenants were entitled to a share of the compensation, *viz.*, the value of their building, *Dunia Lal Seal* v. *Gopi Nath Khetry*, 22 Cal. 820. (8 Cal. 582, distinguished.)

Right of tenants to abatement of rents in proportion to the quantity of lands taken from them. When a portion of putni is acquired, the patnidar is entitled to abatement of rent at the hands of the zemindar, as the land taken up by Government is absolutely lost to the putnidar, and he is also entitled to some share of the compensation money, *Bhobani Nath Chakravarti* v. *Land Acquisit'on Deputy Collector of Bogra*, 7 C. W. N. 130, (S. D. A. for 1860, p. 336, and 28 Cal, 146. discussed). Followed in *Lala Jyoti Prokash* v. *Jogendra Narain*, 11 C. W. N. 52n., see also *Prosunno Moyee* v. *Soondur*, 2 W. R., Act X 30. Similarly when a tenant's land is diminished by reason of an acquisition the tenant is entitled to a proportionate reduction of rent, *Nagoor Rowthar* v. *Akbar Alisa*, 24 I. C. 724. See also *Deen Dayal* v. *Thukroo*, 6 W. R., Act X. 24.

Where no abatement of rent is allowed the landlord is not entitled to any separate portion of the compensation on that account, *Punnabati* v. *Padmanunda Singh*, 7 C. W. N. 538 at p. 542. See also *Satish Chandra* v. *Rai Jatindra Nath*, 7 C. L. J. 284.

A putnidar is entitled to an abatement of rent on the ground that part of the land had been acquired by the Government for public purposes. *Uma Sunkur* v. *Tarini Chunder*, 9 Cal. 571. But when a putnidar was allowed by the zemindar to appropriate the whole of the compensation, the zemindar declaring that he would not grant an abatement *held*, that when the putni was sold under Reg. VIII of 1819 with notice of the amount of the original rent, the purchaser was not entitled to an abatement, *Peari Mohun* v. *Audhiraj Aftab Chand*, 10 C. L. R. 526.

When a Kabuliat contained a stipulation that in no case we shall be able to claim any reduction of rent, nor will it be open to the zemindar to demand more for alluvion, &c., Lands were taken by Government for the purpose of a railway and the compensation was paid to the lessor. *Held*, that the tenant was entitled to a deduction from the rent, *Watson* v. *Nistarini*, 10 Cal. 544.

In a suit by putnidar for abatement of rent on the ground that some lands comprised in the putni have been acquired for the purposes of railway and for refund of excess rent already paid, *Held* that the suit was cognizable by a Revenue Court under Act X of 1859 *Asutosh Roy* v. *Hari Narain Singh*, 3 C. L. J. 143.

Right of a person in possession without title to compensation when real owner unknown: A person in possession of land in the assumed character of owner and exercising peaceably the ordinary rights of ownership, has a perfectly good title to compensation against all the world but the rightful owner. And if the rightful owner does not come forward and assert his title by process of law within the period prescribed by the statute of limitations, his right for ever is extinguished, *Perry (Minister of Public Instruction)* v. *Clissold and others*, 11 C. W. N. cvi (106n.)

A man not in possession of the land acquired cannot come and ask for refund of the compensation money from a person who has already received it, *Kakkolangara* v. *Karala Varma*, 6 M. L. T. 139=2 I. C. 931.

When a man's title to the land acquired is perfected by twelve years' adverse possession, he is entitled to full compensation. *Rajbans Sahay* v. *Rai Mahabir Prasad*, 20 C. W. N. 828=1 Pat L. J. 258=37 I. C. 464.

Effect of an adjudication as to the right of persons claiming compensation under the Land Acquisition Act. An adjudication as to the right of persons claiming compensation under the Land Acquisition Act concludes the question between the same parties in subsequent proceedings, *Chowakaran Makki* v. *Vyyaprath Kunhi Kutti Ali*, 29 Mad. 173 ; see also *Nilmoni Singh Deo* v. *Ram Bandha Rai*, 7 Cal. 388. P. C. : 10 C. L. R. 393, P. C. (4 Cal., 757 : 3 C. L. R. 211, affirmed). This case has been explained in *Punnabati Dai* v. *Pudmanunda Singh*, 7 C. W. N. 538, and referred to in *Bhandi Singh* v. *Ramadhin Rai*, 2 C. L. J. 359 : 10 C. W. N. 991. The same view seems to have been taken in *Ram Chunder* v. *Madho Kumari*, 12 Cal. 484, P. C. (reversing I. L. R. 9 Cal. 411). See however *Mahadevi* v. *Neelamoni*, 20 Mad. 269 ; *Nobodeep Chunder* v. *Brojendra Lall*, 7 Cal. 406 : 9 C. L. R. 117 ; *Dwarka Singh* v. *Salano*, 22 W. R. 38 and *Digaj Deo* v. *Kali Charan Singh*, 34 Cal., 466 : 11 C. W. N. 525. In these latter cases it has been held that no decision under the Land Acquisition Act, should be treated as *res judicata* with respect to the title to the other parts of the property belonging to persons who may come before the Judge under sec. 39 of Act X of 1870.

A decision in a proceeding under the L. A. Act cannot be treated as a decision in a former suit, so as to operate as *res judicata* with reference to the property other than that to which the enquiry under that Act related, *Basant Deo* v. *Keshal Deo*, 2 I. C. 853.

It is a settled law that when statutory rights and liabilities have created and jurisdiction has been conferred upon a special Court for the investigation of certain matters, such jurisdiction is exclusive, and cannot concurrently be exercised by the ordinary Courts, but when the proceedings for acquisition are irregular and imperfect, they will not debar

the remedy by regular suit, *Rametur Singh* v. *Secretary of State*, 34 Cal., 470 : 11 C. W. N. 356 : 5 C. L. J. 669 (2 C. L. J. 359 : 10 C. W. N. 991, referred to).

The apportionment of the compensation under sec. 39 of Act X of 1870 is intended to be a proceeding distinct from that of settling the amount of compensation under the previous proceedings of the Act, and any dispute as to the apportionment is only decided as between those persons who are actually before the Court. A separate notice, therefore, of the apportionment proceedings is requisite to bind any person by those proceedings and where such a notice has not been served, any party interested, although served with the notice of the proceedings for settling the amount of the compensation, cannot be considered a party to the proceedings for apportioning it, and is not barred by the decision in the latter proceedings from bringing a suit under the proviso to sec. 40, to recover a share of the money so apportioned, *Harmut Jan Bibee* v. *Pudma Loohun Dass*, 12 Cal. 33.

An award under the Land Acquisition Act, cannot be affected by a suit to recover from the party to whom compensation has been awarded and to have plaintiff's title declared to the land concerned, *Kaminee Debia* v. *Protap Chunder Sandyal*, 25 W. R. 103.

Mode of enforcing an award. An order made by a Court in a proceeding under the Land Acquisition Act, directing a party, to whom a sum of money had been awarded as compensation had been paid under a previous order, to refund the money, may be enforced under sec. 254 read with sec. 649, C. P. Code, *Nobinkali* v. *Banalata*, 32 Cal., 921 : 2 C. L. J. 595.

An adjudication as to compensation or apportionment of compensation is a decree within the meaning of sec. 2, C. P. Code, and is capable of execution ; and the same is the case with a decree passed in appeal and the principle of restitution laid down in sec. 583, C. P. Code, is also applicable, *Zamindars of Dhar* v. *Rana*, 53 P. R. 1906 : 103 P. L. R. 1906.

Miscellaneous cases. After a reference under sec. 30 of the Land Acquisition Act, in a dispute as to the apportionment of the compensation, the District Judge has jurisdiction to add a party to the proceeding before him under sec. 32 of the C. P. Code, *Kishan Chand* v. *Jagannath*, 25 All., 133.

Valuation of land in a private transaction is not binding in a proceeding under the Land Acquisition Act, *Chomu* v. *Umma*, 14 Mad., 46.

The village from which the land had been acquired, had been given to the widow by her husband, the late zemindar, and she claimed the entire compensation as her absolute jagheer ; which the zemindar's adopted son alleged that it has been assigned to her only by way of

maintenance. The widow failed to produce any document containing any grant to her and all that was established was that she has been enjoying the revenue of the village for many years. *Held*, that the widow had life interest only and that the division of the compensation money into halves is a reasonable way of dealing with it, *Braja Kisara Dev Guru* v. *Kundana Devi*, 22 Mad., 431, P. C. : 3 C. W. N. 378, P. C.

In a suit between two parties one of whom, the plaintiff, who holds an estate for life in the land acquired and the other, the defendant, who is the landlord and is entitled to the reversion. *Held*, that the holder of the life-estate is entitled to a share of the compensation awarded, *Punnabati Dai* v. *Pudmanund Singh*, 7 C. W. N. 538 at pp. 541-542.

On a reference under sec. 18 of Act I of 1894, the District Judge valued the compensation at Rs. 4,200, and the amount was placed in deposit with the Collector. One H then applied for payment of the amount to him and the application was opposed by others claiming the compensation money. The District Judge dismissed the application directing the petitioner to seek redress in a civil suit. *Held* that the order of the District Judge was wrong; he ought to have apportioned the compensation under sec. 30 of the Land Acquisition Act. *Held* also that the Court-fee payable in the appeal was Rs. 2 only and not on the amount in deposit with the Collector, *Harish Chandra* v. *Bhoba Tarini*, 8 C. W. N, 321.

When in a suit for the recovery of the money awarded by the Government for some land acquired for public purposes, the Judge, instead of deciding as between the parties, in possession the money value of the respective rights, determined as between the persons in possession and others whose claims had remained dormant until the acquisition of the land, the relative strength of their titles. *Held* that the order of the Judge was *ultra vires*, his duty under the Land Acquisition Act, being to determine the money value of ascertained interest and not to try the questions of title, *Gour Ram Chunder* v. *Sonaton Dass*, 25 W. R. 320.

When the mortgaged property is acquired before the termination of the stipulated period, if the mortgagee comes forward to get a share of the compensation, he will not be entitled to interest for the whole stipulated period, *Prokash Chandra* v. *Hasan Banu*, 42 Cal., 1146.

The sale of the mortgaged premises under the Land Acquisition Act is not a destruction of the security under sec. 68 of the Transfer of Property Act IV of 1882. *Arrungam* v. *Sivagnana*, 13 Mad., 321. This view is open to doubt. Cf. *Prokash Chandra* v. *Hasan Banu*, 42 Cal., 1146 (1152).

A mortgagee obtained a decree for sale of the mortgaged property, before execution, some of the mortgaged property was acquiredby

Government. The mortgagee never put in any claim for compensation in response to the notification by the Collector, but subsequently sought to attach the compensation awarded to the mortgagor. *Held*, that the mortgagee was not entitled to attach the compensation awarded to the mortgagor, he may proceed against the remainder of the property not taken up and then to proceed under sec. 90 of the Transfer of Property Act, *Basamal* v. *Tajammal Husain*, 16 All. 78.

As to the respective rights of the grantor and grantee to compensation in respect of *service* grants, see *Vad sapu* v. *Sri Raja Vyricherla*, (1911) 2 M. W. N. 406=10 M. L. T. 391.

Appeal : The decision of a Court under this section is a portion of an award and is appealable under sec. 54 of the Act, *Hazura Singh* v. *Sunder Singh*, 53 I. C. 589=97 P. R. 1919.

The claimant has to pay an *ad valorem* Court-fee on the additional amount claimed, see *Mangaldas* v. *Asst. Collector, Ahmedabad*, 23 Bom., L. R. 148.

According to a Bombay decision, the memorandum of appeal raising a question as to the apportionment between the claimant and the Government of the total compensation can be filed with a fee of Rs. 2, under Art. 11 of Schedule II of the Court-fees Act, see Stamp Reference No. 2981 of 1908 of the Bom. H C. decided on 29-1-1909.

PART V.

PAYMENT.

Payment of compensation or deposit of the same in Court.

31. (1) On making an award under section 11, the Collector shall tender payment of the compensation awarded by him to the persons interested entitled thereto according to the award, and shall pay it to them unless prevented by some one or more of the contingencies mentioned in the next sub-section.

(2) If they shall not consent to receive it, or if there be no person competent to alienate the land, or if there be any dispute as to the title to receive the compensation or as to the apportionment of

it, the Collector shall deposit the amount of the compensation in the Court to which a reference under section 18 would be submitted :

Provided that any person admitted to be interested may receive such payment under protest as to the sufficiency of the amount :

Provided also that no person who has received the amount otherwise than under protest shall be entitled to make any application under section 18 :

Provided also that nothing herein contained shall affect the liability of any person, who may receive the whole or any part of any compensation awarded under this Act, to pay the same to the person lawfully entitled thereto.

(3) Notwithstanding anything in this section the Collector may, with the sanction of the Local Government, instead of awarding a money compensation in respect of any land, make any arrangement with a person having a limited interest in such land, either by the grant of other lands in exchange, the remission of land-revenue on other lands held under the same title, or in such other way as may be equitable having regard to the interests of the parties concerned.

(4) Nothing in the last foregoing sub-section shall be construed to interfere with or limit the power of the Collector to enter into any arrangement with any person interested in the land and competent to contract in respect thereof.

NOTES.

After making the award under sec. 11, the Collector shall tender payment of the compensation awarded by him to persons who according to his award are entitled thereto and shall pay it to them except in the following cases :—

(1) If the parties shall not consent to receive it.

(2) If there is no person competent to alienate the land as defined in sec. 3, cl. (9), proviso (IV). For instance a tenant for life, guardian, trustee executor or administrator, etc., etc. This clause applies also to a shebait inasmuch as his position is analogous to that of the manager of an infant, *Ramprasanna* v. *Secretary of State*, 40 Cal., 895=19 C. W. N. 652=22 I. C. 272.

(3) If there is any dispute as to title to receive the compensation.

(4) If there is any dispute as to the apportionment of the compensation.

In all these cases the Collector *shall* deposit the amount of compensation in the Court to which a reference under sec. 18 would be submitted. The deposit of moneys by the Collector is not however a condition precedent to the making of the reference by him, *Gangadas* v. *Haji Ali Mahomed*, 36 I. C. 433 (436) : s. c. 18 Bom. L. R. 826, also see *Jogesh Chandra* v *Yakub Ali*, 17 C. W. N. 1057, s. c. 21 I. C. 111. Though the Act contemplates that when there is a dispute as to apportionment, a reference should be made before any payment has been made, still there is nothing in the Act that prohibits the L. A. Collector from making the reference after payment of compensation to a party, *Satish Chandra* v. *Ananda Gopal*, 20 C. W. N. 816.

The fact that compensation is withdrawn by the party to whom it was awarded does not affect the right of the party who is entitled to receive it to have a reference made to the Court under sec. 18 of the Act, *Ramhit Sahu* v. *Mahadeo Chowdhuri*, 1 P. L. T. 148=2 U. P. L. R. (Pat.) 43= (1920) Pat. 129=56 I. C. 126. The deposit should be in respect of the entire amount of compensation, free from any deduction, and if there is any chance of any such deduction for poundage or other fees, Government has to pay them in addition to the compensation money, *In re Pestonji Jehangir*, 14 Bom. L R. 507=15 I. C. 771=37 Bom., 76. Any person to whom compensation has been accorded by the Collector, may receive the same under protest as to the sufficiency of the amount ; and if any person receives the amount without protest he shall not be entitled to make application for reference under sec. 18.

Person having no power to alienate : When land is converted into money under this Act, the money remains impressed with the character of real estate, *Kelland* v. *Fulford* (1877) 6 Ch. D. 491, *Ex parte Walker* (1853) 1 Drewry, 50. The Legislature has recognised this principle and made provision in sub-sec. (2) of this section to safeguard the interests of reversioner against the life-tenants who might possibly attempt to seize the fund replacing the land. Cf. *Mrinalini* v. *Abinash*, 11 C. L. J. 533 (539), s. c. 14 C. W. N. 1024.

The Government acquired under the Land Acquisition Act, property belonging to a Mahomedan family in North Malabar, and the money

awarded as compensation was deposited in Court under sec. 31(2) of the Act. On claims being made to this amount, *held* that inasmuch as the tarwad had power to alienate the land in respect to which the compensation had been awarded, sec. 32 of the Act would not apply, and the compensation money should be paid to the Karnavan of the tarward. *Mahammad Ali Raja* v. *Ahamad Ali Raja*, 26 Mad. 287, F. B. (5 Mad. 201 and 21 All. 354, referred to and explained). The owner of a service *inam* (not enfranchised) is incompetent to alienate it, *Gobinda* v. *Ramien*, 25 I. C. 600. The *shebait* of a *debutter* property is not competent to alienate the land ; *Kamini Debi* v. *Promothonath*, 13 C. L. J. 597, followed in *Ramprasanna* v. *Secretary of State*, 40 Cal., 895, s. c. 19 C. W. N. 652=22 I. C. 272. A service inam, unless enfranchised is land which the owner is incompetent to alienate within the meaning of ss. 31(2) and 32(1) of the L. A. Act. *Govinda Goundar* v. *Ramien*. 25 I. C. 600.

Mode of enforcing an award. The Land Acquisition Act X of 1870 did not provide for or contemplate an award for compensation being enforced against the Collector by execution proceedings and there is no general law which enables a Civil Court to enforce such a statutory liability, when imposed upon a Collector or other civil officer, by means of execution proceedings without a suit. The ordinary mode of enforcing such an obligation is by suit, unless the Legislature when it creates the obligation prescribes such other means of enforcing it, *Nilkant* v. *Collector of Thana*, 22 Bom. 802, F. B. But the omission in the old law has been supplied by sec. 53 of the present Act I of 1894 by which the Code of Civil Procedure has been made applicable to a proceedings under the Act. See *Zamindars of Dhar* v. *Rana*, 53 P. R. 1906 : 103 P. L. R. 1906, where it has been held that an award under the Land Acquisition Act is a decree within the meaning of sec. 2 of the C. P. Code and is capable of execution. The same view seems to have been taken in *Nabin Kali* v. *Banatata*, I. L. R. 32 Cal. 921 : 2 C. L. J. 595.

Proviso (3) does not bar a suit between claimants *inter se* for apportionment of compensation. Where an award has been made by the Collecter, but has not been followed by a reference to the Civil Court under sec. 18, there has been no adjudication of the rights of the claimants *inter se* ; and a claimant who appeared before the Collector when the award was made, but yet did not apply for a reference under sec. 18 of the Act, can maintain against any person, who may have received the whole or part of the compensation awarded, a civil suit to establish his own claims to such compensation under the last proviso of sub-section (2) of sec. 31 of the Land Acquisition Act. *Punnabati Dai* v. *Pudmamund Singh*, 7 C. W. N. 538, (7 Cal. 388, P. C., followed.) Also see *Chandu Lal* v. *Ladli Begam*, 18 P. W. R. 1919=49 I. C. 657. As to the jurisdiction of District Munsiff to try a suit for the

compensation money see *Pichuvier* v. *Perumal Konan*, (1912) M. W. N. 163=13 I. C. 651.

This proviso applies only to persons whose rights have not been dealt with in adjudication in pursuance of sec. 30 and does not permit a person who is a party to the proceedings under this Act, to have that claim re-opened and re-heard in another suit, *Nilmoni Singh* v. *Ram Bandhu Rai*, 7 Cal., 388 : 10 C. L. R., 393, P. C.

Government acquired a quantity of land which included 4 cottas leased by M to plaintiff as the site of an iron foundry. In the acquisition proceedings the plaintiff did not appear. Five years after, the plaintiff sued to recover compensation for the loss sustained by having been turned out of his holding and deprived of the machinery, & c. *Held* that M, as lessor, was not answerable for plaintiff's eviction or for damages, *William Minto* v. *Kalee Churn Dass*, 8 W. R. 327.

Service of separate notice of the apportionment proceedings is necessary to bind any person by those proceedings ; where such a notice is not served, any party interested cannot be considered as a party to the proceedings and is therefore not barred by the decision in the latter proceedings from bringing a suit to recover a share of the compensation money awarded, *Hurmat Jan Bibee* v. *Padma Lochun*, 12 Cal. 33.

A mortgagee of the land under acquisition is a person interested and is entitled to receive the compensation awarded for it, and his suit to recover money is not a suit for determination of any right to or interest in immoveable property, but is a suit for money, *Viraragava* v. *Krishnasami*, 6 Mad., 344. When a portion of the mortgaged property is acquired, and the compensation money is less than the amount due under the mortgagee, the mortgagee will be entitled to the whole amount awarded, *Topan Dass Jeso* v. *Ram*, 17 P. R. 1907=67 P. W. R. 1907=2 P. L. R. 1908.

If a person, interested in the land acquired, has any objection to the measurement made by the Collector or to the amount of compensation awarded by him, he must obtain a reference to the Court of the Special Judge, and *cannot litigate the matter by a suit in the ordinary Courts*. If the objection, however, relates to the person to whom the compensation is payable or to its apportionment amongst the persons interested, the matter may be investigated either upon a reference to the Court of the Special Judge, or having regard to the provisions of sec. 31, cl. (2), by a suit in the ordinary Courts. But although either of these two methods, is available, the claimant, if he has made his choice and selected his remedy cannot, because he has failed in the course adopted, fall back upon the other. Where after a reference has been made to the Civil Court, the proceedings are dismissed for want of prosecution under Order IX. R. 8, C. P. Code, without any adjudication on the merits, a suit is not maintainable for the trial of the questions involved in the reference, but the party who

seeks to have such questions tried, must get the proceedings reversed by an application under O. IX. R. 9, C. P. Code, which is applicable to all proceedings under the Land Acquisition Act by virtue of sec. 141, C. P. Code, read with sec. 53 of this Act, *Bhundi Singh* v. *Ramadhuni Ra*, 2 C. L J. 359 : 10 C. W. N. 991. (7 Cal. 388, P. C ; 12 Cal. 33 and 7 C. W. N. 538, referred to) See also *Nilmonee Singh* v. *Ram Bunlhoo Roy*, 4 Cal. 757 : 3 C. L R. 211.

Where the owner has not been able to put forward his claim before the Collector by reason of defects or irregularities in the proceeding, or where the claim has been put forward but not adjudged, it is open to him to bring a suit in the Civil Court, and it cannot be said that the jurisdiction of the Court is ousted. In so far as the plaintiff claims damages which could not be foreseen at the time of the acquistion proceedings, a suit is in any case maintainable, *Rameswar Singh* v. *Secretary of State*, 34 Cal. 470 : 11 C. W. N 356 : 5 C. L. J. 669 (2 C. L. J. 359, referred to).

Whenever a question of title arises between rival claimants it must, under the terms of the L. A. Act, be decided in the case, and cannot be made the subject of a separate suit. What has to be acquired in every case under the Act, is the aggregate of rights in the land and not merely some subsidiary right such as that of a tenant, *Baboo Jan Rungiez* v. *Secretary of State*, 4. C. L. J. 256 · 3 C. L. J. 105n.

Grant of other land in exchange. There was no provision in the Land Acquistion Act, X of 1870 under which land could be given as compensation by the grant of other land in exchange, see *Narayanee* v. *Rama Chander*, 13 Mad., 485 : The present Act, however, empowers the Collector, with the previous sanction of the Local Government to make any other arrangement with a person having a limited interest in such land, than the payment of money compensation. His power to make any other arrangement in special cases with any person interested in the land, is not limited by cl. (3) of this section. Similarly where a claimant binds himself by a previous agreement that he will rest content with a particular sum as compensation, the Collector can enforce the agreement, *Fort Press Co.* v. *Municipal Corporation of Bombay*, 44 Bom., 797= 58 I. C. 621.

Limitation in suits for compensation : Where compensation money awarded by Government for land acquired, had been withdrawn by a tenant representing himself the owner, *Held*, that a suit by the landlord against the tenant for recovery of his share of the compensation money is governed by Art. 62 or 120 of the Limitation Act, and not by Art, 36. *Rajah Khetter Kristo Mitter* v. *Kumar Dinendra Narain Roy*, 3 C. W. N. 202.

Art. 17 of the Limitation Act has no application to a case where the amount of compesation has not been determined. It applies only to a case

in which the Collector fails to pay or deposit in Court the amount awarded by him. Art. 18 has also no application as it applies to suits for non-completion of and refusal to complete the acquisition. The proper article applicable is Art. 120; *Rameshwar Singh* v. *Secretary of State* 34 Cal. 470 : 11 C. W. N. 356 : 5 C. L. J. 669 (22 Bom., 802 and I. L. R. 27 Mad. 535, referred to).

In a suit to recover money paid by Government to defendant as compensation for land taken for public purposes, the plaintiff's cause of action against the defendant accrued at the time when the defendant first took the money from the Government, *Azroal Singh* v. *Lala Gopinath*, 8 W. R. 23.

This section does not apply in a case of acquisition made by virtue of the provisions of s. 91 of the city of Bombay Municipal Act, *Bombay Municipality* v. *Damodas Bros*, 23 Bom. L. R. 35=60 I. C. 571.

"Chapter V of the Act concerns the payment of compensation. We have added clauses to sec. 40 as amended by sec. 12 of the Bill, empowering on the one hand the Collector to deposit the amount of his award in Court, when for any reason there is no person able and willing to receive it, and on the other empowering the owner of the land, if dissatisfied with the award, to accept the amount under protest to that extent it will no longer be to the advantage of the owner to protract proceedings, and run on a claim for interest: for, if, notwithstanding the express privilege given to the owner, he refuses to take the compensation money placed at his disposal he has no claim in interest on it"—See *Select Committee's Report, dated 1st February, 1893.*

Investment of money deposited in respect of lands belonging to persons incompetent to alienate.

32. (1) If any money shall be deposited in Court under sub-section (2) of the last preceding section and it appears that the land in respect whereof the same was awarded belonged to any person who had no power to alienate the same, the Court shall—

(*a*) order the money to be invested in the purchase of other lands to be held under the like title and conditions of ownership as the land in respect of which such money shall have been deposited was held, or

(*b*) if such purchase cannot be effected forthwith,

then in such Government or other approved securities as the Court shall think fit;

and shall direct the payment of the interest or other proceeds arising from such investment to the person or persons who would for the time being have been entitled to the possession of the said land, and such moneys shall remain so deposited and invested until the same be applied—

(*i*) in the purchase of such other lands as aforesaid; or

(*ii*) in payment to any person or persons becoming absolutely entitled thereto.

2. In all cases of moneys deposited to which this section applies the Court shall order the costs of the following matters, including therein all reasonable charges and expenses incident thereto, to be paid by the Collector, namely:—

(*a*) the costs of such investments as aforesaid;

(*b*) the costs of the orders for the payment of the interest or other proceeds of the securities upon which such moneys are for the time being invested, and for the payment out of Court of the principal of such moneys, and of all proceedings relating thereto except such as may be occasioned by litigation between adverse claimants.

NOTES.

Persons who are incompetent to alienate are tenants for life, guardians, trustees, shebaits, Mutwallis, widows, executors, administrators, &c., Cf. *Kamini Debi* v. *Promotho*, 39 Cal. 33=13 C. L. J. 597=10 I. C. 491. The position of a *shebait* is analogous to that of a manager of an infant. He is entitled to possess and manage the dedicated property without having any power of alienation over it, *Ramprasanna* v. *Secretary of State*, 40 Cal., 895. The compensation money payable in respect of a *watandar's*

interest should be deposited in Court; *Collector of Belgaum* v. *Bhimrao Patel*, 10 Bom. L R. 657.

The words "person who had no power to alienate" in this section must be construed particularly as having reference to the alienation to the Collector and not generally to a power of alienation in any case, *L. A. Officer, Karachi* v. *Lakhmibai*, 11 I. C. 304. In this case it has been maintained that the case of a Hindu widow does not fall within the purview of this section.

If it appears to the Court that the land in respect of which the compensation was awarded belonged to a person who had no power to alienate the same before the acquisition, the Court shall order the money to be invested in the purchase of another land, and if such purchase cannot be effected forthwith, then the Court shall order the money to be invested in the purchase of Government securities, and shall direct the payment of interests or other proceeds to the person who would have been entitled to possession of the land. But where in violation of this principle, money is paid to the limited interest-holder, the Court can, in exercise of its inherent jurisdiction compel him to bring the money into Court and direct its investment in Government or other approved securities, *Mrinalini* v. *Abinas*, 11 C. L. J. 533 s. c. 14 C. W. N. 1024. Also *London & N. W. Ry.* v. *Lancaster Corporation*, (1851) 15 Beavan 22. In a case decided by Coxe and Bell JJ. it has been maintained that the inherent power to order refund of money exists only in a case where the money is wrongfully taken out of Court by a party by an abuse of the processes of the Court, but this principle will not authorise the Court to order a refund of money paid by Collector without any irregularity apparent at the time, *Gobindo Rani* v. *Brinda Rani*, 35 Cal., 1104, s. c. 12 C. W. N. 1039. The correctness of this decision is however open to doubt. Also see *Jogesh Chandra* v. *Yakub Ali*, 17 C. W. N. 1057=21 I. C. 111; *Collector of Ahmedabad* v. *Lavji Mulji*, 13 Bom. L. R. 259. Cf. *Satish Chandra Singha* v. *Ananda Gopal*, 20 C. W. N. 816.

The words "invested in the purchase of other lands," include the erection of buildings upon the land, therefore the compensation money can be utilised for such a purpose, *In re Ganendra Mullick*, 25 C. W. N. 597.

The Collector is liable to pay all the costs mentioned in clauses (*a*) and (*b*) of sub-sec. 2.

This section applies to cases where land in possession of a Hindu widow as heiress of her husband is acquired, *Mrinalini* v. *Abinash* 11 C. L. J. 533, s. c. 14 C. W. N. 1024. Cf. *L. A. Officer, Karachi* v. *Lakhmibai*, 11 I. C. 304. Land, held by a Hindu widow with a mere life estate, is acquired for public purposes, *held* that the compensation awarded for such land should not be paid over to the widow, but should be invested in the purchase of other lands to be held on similar terms, or if such

purchase cannot be effected forthwith, then in such Government or other approved securities as the Court shall think fit. Payment of the rent or other proceeds of such investment will be made to the life-tenant, who for the time being is entitled to the possession of such land ; *Sheo Rattan Rai* v. *Mohri*, 21 All. 354 : A. W. N. (1899) 96, followed in *Sheo Prasad Singh* v. *Jalaha Kunwar*, 24 All. 189 : Cf. 11 C. L. J. 533, s. c. 14 C. W. N. 1024. *Contra—L. A. Officer, Karachi* v. *Lakmibai*, 11 I. C. 304.

Though the compensation money for lands, under the control of a shebait or a trustee, should ordinarily be invested still it has been *held* that under cl. (*i*) of sub-section (1) the Court may sanction the application of the money to effect repairs and improvements upon the remainder of the trust property [vide sec. 69 of the Lands Clauses Consolidation Act, 1845]. As under this section the fund is placed in the custody of the Court, jurisdiction is by implication conferred upon the Court to deal with all questions concerning its application ; *Kamini Debi* v. *Promotho Nath*, 39 Cal., 33, s. c. 13 C. L. J. 597=10 I. C. 491 ; *Debendra* v. *Tulsimoni*, 26 C. L. J. 123 s. c. 41 I C. 810. So a Hindu widow can lawfully ask to be given a portion of the invested fund on the ground, that contingencies have happened entitling her to make *absolute* use of it and the Court can under this section investigate the same, *Debendra* v. *Tulsimoni*, 26 C. L. J. 123.

An effectual order under this section cannot be made unless there is money under the custody of the Court, *Gobindo Rani* v. *Brinda Rani*, 35 Cal. 1104, s. c. 12 C. W. N. 1039. Before proceeding under this section the Court must be first satisfied that the person to whom the acquired land belongs is a limited owner, *Krishna Bai* v. *Secretary of State*, 42 All., 555=57 I. C. 520, s. c. 18 A. L. J. 695.

Properties set apart for charities are *prima facie* inalienable ; and when such properties are acquired under the Land Acquisition Act, the award made thereunder may direct the investment of the compensation money in Government securities, *Shiva Rao* v. *Nagappa*, 29 Mad. 117.

The Government acquired under the Land Acquisition Act, property belonging to a Mahomedan family in North Malabar, governed by the Marumakatyam Law and the money awarded as compensation was deposited in Court under sec. 31 (2) of the Act, on claims being made to this amount. *Held*, that inasmuch as the tarwad had power to alienate the land in respect to which the compensation had been awarded, sec. 32 of the Act, did not apply and the compensation money should be paid to the karnavan of the tarwad, *Mahammad Ali Raja* v. *Ahamed Ali Raja*, I. L. R. 26 Mad., 287, F. B. (5 Mad. 201 and 21 All. 354; referred to and explained.)

Where the guardian of a lunatic obtains the District Judge's permission to take out compensation money in deposit with the L. A. Judge,

the latter has no jurisdiction to refuse to pay; *Satyendra Nath Dey* v. *Secretary of State*, 20 C. W. N. 975.

A widow (with life-interest) withdrew from the L. A. Court compensation money in deposit with the consent of her next reversioner. Thereupon a grand-daughter of the widow claiming to be entitled to the money as having been the absolute property of her deceased mother subject only to the life-interest of the widow succeeded in getting the above order cancelled and also an order for refund of the money. *Held*, that the order directing the refund of the compensation money is not an award within the meaning of sec. 54 of the L. A. Act, and is therefore not appealable, but the Court has jurisdiction to enforce the order for refund by imprisonment or by attachment and sale. See O. XXI, r. 30 and secs. 36 and 37, C. P. C. 1908; *Nobin Kali Debi* v. *Banolata Debi*, 32 Cal. 921 : 2 C. L. J. 595.

Investment in Government security should be made by the Accountant-General of Bengal and purchase of lands should be effected through the Collectors. *See Rule 1 of 21st February 1896.* The reversionary heirs, after the death of a Hindu widow, in order to reach the compensation money in deposit and the interest accruing thereon must take out a succession certificate in respect of the estate of the original owner and not the widow, see *Abinash* v. *Probodh*, 15 C. W. N. 1018=10 I. C. 357.

The provisions of sec 32 of this Act do not apply to the compulsory acquisition of land which forms part of an un-recognised sub-division of a *narva* holding, *Asst. Collector of Kaira* v. *Vithaldas*, 40 Bom., 254=33 I. C. 464=17 Bom. L. R. 1140.

Appeal: An order under this section, by which the Court directs that the sum awarded as compensation is to be invested in Government securities, is part of an award made in a proceeding under the Act within the meaning of s. 54, and is appealable, *Trinayani Dassi* v. *Krishna Lal* 6 I. C. 157, and an *ad valorem* Court fee is to be paid on the value of the appeal, see *Sm. Trinayani* v. *Krishna Lal*, 39 Cal., 906=14 I. C. 724=17 C. W. N. 933. But there is no appeal against an order of the District Judge allowing a Hindu widow to withdraw the compensation money deposited by the Collector under S. 31 of the Act, *Biswas Nath* v. *Bidhumukhi*, 19 C. W. N. 1290=31 I. C. 677.

Investment of money deposited in other cases.

33. When any money shall have been deposited in Court under this Act for any cause other than that mentioned in the last preceding section, the Court may, on the application of any party interested or

claiming an interest in such money, order the same to be invested in such Government or other approved securities as it may think proper, and may direct the interest or other proceeds of any such investment to be accumulated and paid in such manner as it may consider will give the parties interested therein the same benefit therefrom as they might have had from the land in respect whereof such money shall have been deposited or as near thereto as may be.

NOTES.

This section refers to cases, other than those mentioned in the last preceding section, in which the money has been deposited in Court. The Court may under this section on the application of any party interested or claiming an interest in such money, order the investment of the money in Government or other approved securities. A reversioner or a remainder-man can make an application under this section.

Payment of interest.

34. When the amount of such compensation is not paid or deposited on or before taking possession of the land, the Collector shall pay the amount awarded with interest thereon at the rate of six per centum per annum from the time of so taking possession until it shall have been so paid or deposited.

NOTES.

In urgent cases where the Collector, under sec. 17 of this Act, takes possession of the land before the award is made, he is bound to pay the amount awarded with interest thereon at the rate of 6 per cent. per annum from the time of his taking possession till the date of payment or deposit. But no interest is payable after the deposit of compensation money in Court.

PART VI.

TEMPORARY OCCUPATION OF LAND.

Temporary occupation of waste or arable land. Procedure when difference as to compensation exists.

35. (1) Subject to the provisions of Part VII of this Act, whenever it appears to the Local Government that the temporary occupation and use of any waste or arable land are needed for any public purpose, or for a Company, the Local Government may direct the Collector to procure the occupation and use of the same for such term as it shall think fit, not exceeding three years from the commencement of such occupation.

(2) The Collector shall thereupon give notice in writing to the persons interested in such land of the purpose for which the same is needed, and shall, for the occupation and use thereof for such term as aforesaid, and for the materials (if any) to be taken therefrom, pay to them such compensation, either in a gross sum of money, or by monthly or other periodical payments, as shall be agreed upon in writing between him and such persons respectively.

(3) In case the Collector and the persons interested differ as to the sufficiency of the compensation or apportionment thereof, the Collector shall refer such difference to the decision of the Court.

NOTES.

This section relates to temporary occupation and use of any waste or arable land, required for any public purpose or for any company for a term not exceeding three years. In such cases the Collector shall give notice in writing to the persons interested and shall pay to them such compensation either in a gross sum of money, or by monthly or other periodical payment as shall be agreed upon in writing between him and

such persons respectively. But in case of any difference as to the sufficiency of the compensation or apportionment thereof, the Collector shall refer such difference to the decision of the Court. As to mode of calculating compensation in cases of acquisition under this section, see *Secretary of State v. Abdul Salam*, 37 All., 347=30 I. C. 245.

Power to enter and take possession, and compensation on restoration.

36. (1) On payment of such compensation, or on executing such agreement, or on making a reference under section 35, the Collector may enter upon and take possession of the land, and use or permit the use thereof in accordance with the terms of the said notice.

(2) On the expiration of the term, the Collector shall make or tender to the persons interested compensation for the damage (if any) done to the land and not provided for by the agreement, and shall restore the land to the persons interested therein:

Provided that, if the land has become permanently unfit to be used for the purpose for which it was used immediately before the commencement of such term, and if the persons interested shall so require, the Local Government shall proceed under this Act to acquire the land as if it was needed permanently for a public purpose or for a company.

NOTES.

After payment of compensation, or executing agreement or making a reference under s. 35, the Collector may take possession of the land, and use or permit the use thereof, and on expiration of the term the Collector must restore the land to the persons interested, with further compensation for the damage, if any, done to the land and not provided for in the agreement. But if the land has become permanently unfit for the purpose for which it was formerly used, and if the persons interested press the Government to acquire the land permanently, the Government shall proceed under this Act, to acquire the land. If the Government refuse to make the acquisition then the persons interested may bring a suit for compensation against the Government within one year from the date of refusal to

complete the acquisition, see art 18, Schedule II of the Limitation Act, XV of 1877.

Compensation payable to the owner under sub sec (2) for the purpose of restoring the land to its original condition is not assessable until after the term of occupation has expired. So there can be no award in advance for compensation of this description, *Secretary of State* v *Abdul Salam*, 37 All, 347=30 I C. 245

37. In case the Collector and persons interested differ as to the condition of the land at the expiration of the term, or as to any matter connected with the said agreement, the Collector shall refer such difference to the decision of the Court.

Difference as to condition of land.

NOTES.

In case of any difference between the Collector and the persons interested as to the condition of the land at the expiration of the term, or as to any matter connected with the agreement, the Collector shall refer such difference to the decision of the Court.

PART VII.

ACQUISITION OF LAND FOR COMPANIES.

38. (1) Subject to such rules as the Governor General of India in Council may from time to time prescribe in this behalf, the Local Government may authorize any officer of any Company desiring to acquire land for its purposes to exercise the powers conferred by section 4.

Company may be authorized to enter and survey.

(2) In every such case section 4 shall be construed as if for the words "for such purpose" the words "for the purposes of the Company" were substituted; and section 5 shall be construed as if after the words "the officer" the words "of the Company" were inserted.

NOTES.

Although the Bank of Bengal has the power under its Act, of 1876, to acquire land, still the Local Government can take steps under the Land Acquisition Act, to acquire lands for the Bank. There is no authority to justify the contention that the Local Government could not in this instance take the action it has taken, *Ezra* v. *Secretary of State*, 30 Cal. 36 at p. 74 : 7 C. W. N. 249 at p. 268.

When proceedings under the Act, are taken on behalf of a Municipal Board, the Board has no power to withdraw from the acquisition. It is the Government alone that can withdraw from the proceedings, *Secretary of State* v. *Qamar Ali*, 16 A. L. J. 669, s. c. 51 I. C. 501.

Previous consent of Local Government and execution of agreement necessary.

39. The provisions of sections 6 to 37 (both inclusive) shall not be put in force in order to acquire land for any Company, unless with the previous consent of the Local Government, nor unless the Company shall have executed the agreement hereinafter mentioned.

NOTES.

Sec. 39 declares that the provisions of secs. 6 to 37, both inclusive, shall not be put in force in order to acquire land for any company unless with the previous consent of the Local Government, nor unless the company shall have executed the agreement hereinafter mentioned. Under sec. 39, therefore, the proceedings under secs. 36 to 37 cannot be put in force without the previous consent of the Local Government, nor unless the company for which the land is going to be acquired shall have executed the agreement to which reference is made in sec. 41, *Ezra* v. *Secretary of State*, 30 Cal., 36 : 7 C. W. N. 249.

N. B.—The **agreement** is not chargeable with stamp duty, see sec. 51 *post.* The words "hereinafter mentioned" refer to sec. 41.

It is not necessary for a Railway Company before constructing a level crossing in a public street, to comply with the requirements of the Land Acquisition Act relating to compulsory acquisition of land. *Municipal Corporation* v. *Great Indian Peninsula Ry. Co.*, 21 C. W. N. 441=25 C. L. J. 209=21 M. L. T. 1=19 Bom. L. R. 48=15 A. L. J. 63=(1917) M. W. N. 83=38 I. C. 923 (P. C.)

Form of consent :—The consent of the Local Government mentioned in this section need not be express or formulated in specific terms. *Ezra* v. *Secretary of State*, 30 Cal. 36=7 C. W. N. 249.

40. (1) Such consent shall not be given unless the Local Government be satisfied, by an enquiry held as hereinafter provided,—

Previous enquiry.

(*a*) that such acquisition is needed for the construction of some work, and

(*b*) that such work is likely to prove useful to the public.

(2) Such enquiry shall be held by such officer and at such time and place as the Local Government shall appoint.

(3) Such officer may summon and enforce the attendance of witnesses and compel the production of documents by the same means and, as far as possible, in the same manner as is provided by the Code of Civil Procedure in the case of a Civil Court.

NOTES.

Sec. 40 declares that the consent provided for in sec. 39 shall not be given unless the Local Government be satisfied by an enquiry held as "hereinafter provided" (1) that such acquisition is needed for the construction of some work and (2) that such work is likely to prove useful to the public. Under sub-sec. 2, the enquiry is to be held by such officer and at such time and place as the Local Government shall appoint. The enquiry which is required under sub-sec. 2 is for the purpose of satisfying the Local Government. The application which is made to the Local Government is made by the company on the allegation that the acquisition is needed for the construction of some work. The company, therefore, has to satisfy the Local Government as to the reality and *bona fides* of the said allegations. It has also to satisfy the Government and the Government is to satisfy itself that the work which is proposed to be constructed is likely to prove useful to the public. The only parties concerned in this enquiry are the Government on one side, which has to be satisfied, and the company which has to furnish materials for the purpose of satisfying the Local Government. There is no provision in this section that any other person should be summoned or required to attend at the enquiry contemplated. It is contrary to the policy of the Act to hold that at an enquiry under

sec. 40, the persons whose land is intended to be acquired should have an opportunity to appear and object: Sec. 40 constitutes the Government, as the custodian of the public interests, the sole judge of the two facts mentioned therein, namely, whether the land is required for the construction of some work, and, secondly, whether that work will prove useful to the public. The only other person concerned in the matter is the company which makes the application for the land. The officer deputed to make the enquiry is to give that company notice, and, if necessary, to take evidence from the company regarding the questions on which he is to report.

Sub-sec. 3 in empowering the said officer to summon witnesses, &c., contemplates only the possibility of his having to take evidence on behalf of the party, who is principally concerned in that particular enquiry, namely, the company. The time and place which are appointed are for the purpose of enabling the company to produce its evidence or to place materials for the satisfaction of the officer. Nowhere in the Act is there any provision that the owner of the land should appear before the officer deputed under sec. 40, or at all, until the service upon him of the notice under sec. 40. Had the intention of the Legislature been that the owner of the property should be required to be present at the enquiry under sec. 40, then it would have expressly provided for that purpose. *Ezra* v. *Secretary of State*, 30 Cal. 36 : 7 C. W. N. 249. On appeal to the Privy Council, see 32 Cal., 605 : 9 C. W. N. 454 : 1 C. L. J. 227 : 2 A. L. J. 771 : 7 Bom. L. R. 422. (P. C.)

Provided by the Code of Civil Procedure—see Orders XI, XIII and XVI of C. P. Code, 1908.

Agreement with Secretary of State in Council.

41. Such officer shall report to the Local Government the result of the enquiry, and, if the Local Government is satisfied that the proposed acquisition is needed for the construction of a work, and that such work is likely to prove useful to the public, it shall, subject to such rules as the Governor-General of India in Council may from time to time prescribe in this behalf, require the Company to enter into an agreement with the Secretary of State for India in Council, providing to the satisfaction of the Local Government for the following matters, namely :—

(1) the payment to Government of the cost of the acquisition ;

(2) the transfer, on such payment, of the land to the Company ,

(3) the terms on which the land shall be held by the Company ,

(4) the time within which, and the conditions on which, the work shall be executed and maintained , and

(5) the terms on which the public shall be entitled to use the work

NOTES.

Sec 41 provides that after the enquiry directed by sec 40, the officer in question shall report to the Local Government the result of such enquiry ; and if the Local Government is satisfied that the proposed acquisition is needed for the construction of a work, which is likely prove useful to the public, it shall, subject to such rules as the Governor General in Council may, from time to time, prescribe in this behalf, require the company to enter into an agreement with the Secretary of State for India in Council providing to the satisfaction of the Local Government, for the several matters which are set forth specially in that section This section makes the Government the sole judge of the manner in which the public are to have use of the land taken up If the agreement provides that the public, subject to the Act constituting and the bye-laws regulating the Bank, shall be entitled to the said building in relation to the Government business so far as the same may be utilized by the Bank, for the purposes of such business, there is a substantial provision in the agreement regarding the user by the public under cl (5) of sec 41, *Ezra v Secretary of State*, 30 Cal 36 at pp 78-79 ; 7 C. W. N 249

Publication of agreement

42. Every such agreement shall, as soon as may be after its execution, be published in the Gazette of India, and also in the local official Gazette, and shall thereupon (so far as regards the terms on which the public shall be entitled to use the work) have the same effect as if it had formed part of this Act.

NOTES.

After the publication of the agreement, entered into between the Secretary of State and the company, in the Local Official Gazette and the Gazette of India, it becomes part and parcel of the Law, by virtue of the provisions of sec. 42. As to what provisions should be made in the agreement see Board's Instructions 7, Bengal L. A. Manual p. 52. Publication of the agreement is recommended to apprise the public of the terms on which they may utilise the work.

Sections 39 to 42 not to apply where Government bound by agreement to provide land for Companies.

43. The provisions of sections 39 to 42, both inclusive, shall not apply, and the corresponding sections of the [1] Land Acquisition Act, 1870, shall be deemed never to have applied, to the acquisition of land for any Railway or other Company, for the purposes of which, under any agreement between such Company and the Secretary of State for India in Council, the Government is, or was, bound to provide land.

NOTES.

The provisions of secs. 39 to 42, both inclusive, shall not apply to the acquisition of land for any Railway or other company, where the Government was bound under any agreement to provide land for any companies. This section exempts such cases from the operations of secs. 39 to 42.

How agreement between Railway Company and Secretary of State may be proved.

44. In the case of the acquisition of land for the purposes of a Railway Company the existence of such an agreement as is mentioned in section 43 may be proved by the production of a printed copy thereof purporting to be printed by order of Government.

NOTES.

The Hon'ble Mr. Bliss in introducing the Bill said :—"Part VII of the Act lays down the procedure to be adopted when it is sought to acquire land for companies. It indicates, though perhaps not so clearly as is desirable, that it is not intended that the law shall be put in force for the

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[1] Repealed by the present Act.

acquisition of land for all companies, even though registered under the Indian Companies' Act of 1882. It is not intended that the Act shall be used for the acquisition of land for any company in which the public has merely an indirect interest and of the works carried out by which the public can make no direct use. The Act cannot, therefore, be put in motion for the benefit of such a company as a Spinning or Weaving Company, or as an Iron Foundry, for although the works of such companies are distinctly "likely to be useful to the public," it is not possible to predicate of them "the terms on which the public shall be entitled to use" them, a condition precedent to the acquisition of the land as laid down in sec. 41. I mention this point because the questions of the kind of companies, for the purposes of which the land may be acquired under the Act, has more than once been raised; and it is important that the public should understand that the Act will not be used in furtherance of private speculations."

PART VIII.

MISCELLANEOUS.

45. (1) Service of any notice under this Act shall be made by delivering or tendering a copy thereof signed, in the case of a notice under section 4, by the officer therein mentioned, and, in the case of any other notice, by or by order of the Collector or the Judge.

Service of notices.

(2) Whenever it may be practicable, the service of the notice shall be made on the person therein named.

(3) When such person cannot be found, the service may be made on any adult male member of his family residing with him; and, if no such adult male member can be found, the notice may be served by fixing the copy on the outer door of the house in which the person therein named ordinarily dwells, or carries on

business, or by fixing a copy thereof in some conspicuous place in the office of the officer aforesaid or of the Collector or in the Court-house, and also in some conspicuous part of the land to be acquired :

Provided that, if the Collector or Judge shall so direct, a notice may be sent by post, in a letter addressed to the person named therein at his last known residence, address or place of business and registered under Part III of the Indian Post Office Act, 1866, and service of it may be proved by the production of the addressee's receipt.

NOTES.

The provisions of this section are somewhat similar to the provisions of secs. 75, 78 and 80 of the C. P. Code and it prescribes the modes in which notices are to be served upon persons interested. Besides the modes prescribed in this section, the Collector or the Judge may direct a notice to be sent by registered post under the provisions of secs. 28 and 29 of the Indian Post office Act VI of 1898.

As to the meaning and effect of service of notice by post, see sec. 27 of the General Clauses Act X of 1897.

Notices should ordinarily be served upon the person named in the notice, and when such person cannot be found, in the manner provided in sub-sec. (3) of this section, *Fuzal Rasul* v. *Collector of Agra*, 17 A. L. J. 268=50 I. C. 70. Service of a notice under s. 12(2) of the Act, on the manager of the office of the Receiver of an estate, in the absence of the Receiver is not good and proper service under sec. 45(3), *Raja Pupamma* v. *Revenue Divisional Officer, Guntur*, 33 M. L. J. 472, s. c. (1917) M. W. N. 878=42 I. C. 235. There is some doubt as to whether the provisions of the C. P. Code can be taken to apply to service of notice under this Act, subject to the provisions of this section, by virtue of sec. 53 hereof. *Ibid.* As to the significance of the expression "cannot be found" in clause (3), see *Fazal Rasul* v. *Collector of Agra*, 17 A. L. J. 268=50 I. C. 70, where it has been *held* that the mere temporary absence of a person from his house does not bring him within the meaning of the expression. As to whether non-service of notice in accordance with the provisions of this section and sec. 9 will render the whole proceeding void see the notes under sec. 9 and *Kasturi Pillai* v. *Municipal Council, Erode*, 43 Mad. 280, s. c. 37 M. L. J. 618.

Penalty for obstructing acquisition of land.

46. Whoever wilfully obstructs any person in doing any of the acts authorized by section 4 or section 8, or wilfully fills up, destroys, damages or displaces any trench or mark made under section 4, shall, on conviction before a Magistrate, be liable to imprisonment for any term not exceeding one month, or to fine not exceeding fifty rupees, or to both.

NOTES.

Penalty for obstructing operations under the Act: The two essential requirements of the section are (1) *mens rea* or criminal intent and (2) *authorised* operations. *Vide* notes under secs. 4 and 8, pp. 16 and 21. There should be a regular trial and conviction for an offence under this section.

Magistrate to enforce surrender.

47. If the Collector is opposed or impeded in taking possession under this Act of any land, he shall, if a Magistrate, enforce the surrender of the land to himself, and if not a Magistrate, he shall apply to a Magistrate or (within the towns of Calcutta, Madras and Bombay) to the Commissioner of Police, and such Magistrate or Commissioner (as the case may be) shall enforce the surrender of the land to the Collector.

Completion of acquisition not compulsory, but compensation to be awarded when not completed.

48. (1) Except in the case provided for in section 36, the Government shall be at liberty to withdraw from the acquisition of any land of which possession has not been taken.

(2) Whenever the Government withdraws from any such acquisition, the Collector shall determine the amount of compensation due for the damage suffered by the owner in consequence of the notice or of any proceedings thereunder, and shall pay such amount

to the person interested, together with all costs reasonably incurred by him in the prosecution of the proceedings under this Act relating to the said land.

(3). The provisions of Part III of this Act shall apply, so far as may be, to the determination of the compensation payable under this section.

NOTES.

The Government except in the special case provided for in sec. 36, is at liberty to withdraw from the acquisition of the land, of which possession has not been taken, of course subject to paying compensation for any damages thereby caused, see *Fort Press Co. Ltd.* v. *Municipal Corporation of the City of Bombay* 44, Bom. 797 (822).

The circumstances under which the Government may withdraw are explained by the Board in their Rule 19. This rule, after stating that too great care cannot be taken in making the examination, proceeds to say, "the same course should be followed, if at any time before an award or reference to the Civil Court, the Collector has reason to believe that the cost of the acquisition will considerably exceed the estimate." Therefore until the reference to the Civil Court, it is open to the Local Government or the company to withdraw from the acquisition, and the award has no binding effect. Should the Government persist in going on with the acquisition, the amount of the compensation fixed by the Collector is binding upon the Government, but not on the person interested. For under no circumstance can the Civil Court award less than the amount fixed by the Collector, *Ezra* v. *Secretary of State*, 30 Cal., 36 at p. 85. 7 C. W. N. 249.

In all cases where the Government withdraws from the acquisition, the Collector shall determine the amount of compensation due for the damage sustained by the owner in consequence of the notice or of any proceedings thereunder and shall pay him such amount; together with all costs incurred by him. In assessing the compensation and the damages the Collector shall take into consideration the costs mentioned in clauses 5 and 6 of sec. 23 (1). If the owner is dissatisfied with the Collector's offer, he has the same right of reference to the Civil Court under Part III, of this Act, for the determination of his compensation due on account of the damages suffered, as in cases of acquisition.

No Compensation should be awarded on account of delay between the date of the notification and the actual acquisition of the land, where no

damage is shown to have been sustained on account of the delay, *Johnston* v. *Secretary of State*, 60 P. R. 1917=42 I. C. 905. A pre-existing contract between a claimant and the company for whose benefit the acquisition is made that the former will not ask for more than a particular sum as compensation is binding between the parties ; such contract is not rendered nugatory because power of withdrawal has been reserved to the Government under this section, *Fort Press Co. Ltd.* v. *Municipal Corpo ation of Bombay*, 44 Bom., 797=58 I. C. 621.

Acquisition of part of house or building.

49. (1) The provisions of this Act shall not be put in force for the purpose of acquiring a part only of any house, manufactory or other building, if the owner desire that the whole of such house, manufactory or building shall be so acquired :

Provided that the owner may, at any time before the Collector has made his award under section 11, by notice in writing, withdraw or modify expressed desire that the whole of such house, manufactory or building shall be so acquired :

Provided also that, if any question shall arise as to whether any land proposed to be taken under this Act does or does not form part of a house, manufactory or building within the meaning of this section, the Collector shall refer the determination of such question to the Court and shall not take possession of such land until after the question has been determined.

In deciding on such a reference the Court shall have regard to the question whether the land proposed to be taken is reasonably required for the full and unimpaired use of the house, manufactory or building.

(2) If, in the case of any claim under section 23, sub-section (1), *thirdly*, by a person interested, on account of the severing of the land to be acquired

from his other land the Local Government is of opinion that the claim is unreasonable or excessive, it may, at any time before the Collector has made his award, order the acquisition of the whole of the land of which the land first sought to be acquired forms a part.

(3) In the case last hereinbefore provided for no fresh declaration or other proceedings under sections 6 to 10, both inclusive, shall be necessary; but the Collector shall without delay furnish a copy of the order of the Local Government to the person interested, and shall thereafter proceed to make his award under section 11.

NOTES.

In sec. 49 of the Act, the word "house" is not confined to land covered by a building and includes not only a courtyard attached to a house but also as much of the land attached to the house as is necessary for the convenient occupation of the same; and, therefore, the Government was not entitled to acquire the land in suit, alone, without the consent of the owners, *Nawab Mumtazud Doula* v. *Secretary of State*, 9 O. C. 311, (8 O. C. 118; I. L. R. 11 All. 378; *State* v. *Midland Ry. Co.*, L. R. 1 Ch. 275 and *St. Thomas Hospital (Generals)* v. *Charing Cross Ry. Co.*, 30 L. J. Ch. 395, referred to.) Land which is not a house, manufactory or building in the literal sense and which is not reasonably required for the full and unimpaired use of a house, manufactory or building cannot be considered as part of the "house, manufactory or building" within the meaning of this section, *Nita Ram* v. *Secretary of State*, 30 All., 176=5 A. L. J. 166=(1908) A. W. N. 63.

Under sec. 55 of Act X of 1870, which corresponds with sec. 49 of the present Act, the Collector was not competent to refer nor a District Judge to decide any question as to whether the land proposed to be taken did or did not form part of a house, manufactory or building, see *Taylor* v. *Collector of Purneah*, 14 Cal., 423 and *Rama Lakshmi* v. *Collector of Kistna*, 16 Mad. 321. But in order to remedy the defect in the old law, proviso (2) has been added to this section and under which the Collector is bound to refer the question for the determination of the Court, and he cannot now take possession of a part of a house or building until after the question has been determined.

Sub-sec. (1) hereof says "the provisions of this Act, shall not be put in force for the purpose of acquiring a part only of any house, manufactory, or other building, if the owner desires that the whole of such house, manufactory or building shall be so acquired." This portion of the section is a reproduction of sec. 55 of Act X of 1870, which is substantially in the same terms as sec. 92 of the English Land Clauses Act, 1845. Sec. 49 of Act I of 1894 contains the following new provisions : "Provided that the owner may, at any time, before the Collector has made his award under sec. 11, by notice in writing, withdraw or modify his expressed desire that the whole of such house, manufactory or building shall be acquired." Provided also that, if any question shall arise as to whether any land proposed to be taken under this Act does or does not form part of a house manufactory or building within the meaning of this section, the Collector shall refer the determination of such question to the Court and shall not take possession of such land until after the question has been determined. A reference under this section is compulsory and the Collector has no option in the matter, *Saraswati Pattack* v. *L. A. Deputy Collector of Champaran*, 2 P. L. J. 204=39 I. C. 650.

In deciding on such a reference the Court shall have regard to the question whether the land proposed to be taken is reasonably required for the full and unimpaired use of the house, manufactory or building. It seems clear that the new provisions introduced in the new Act to meet the decisions in cases under the Land Clauses Act and the earlier Indian Act, in which it was held that the word "*house*" included all that was necessary to the enjoyment of the house whether attached to the main building or not. It may be that under the Act of 1894, a portion of a block of buildings is a part of a house in the sense that it is structurally connected with the rest of the block, but at the same time, is not necessarily required for the full and unimpaired use of the house, so as to impose on the public body the obligation to acquire the whole block. But when the public body seeks to acquire any portion of the block which is structurally connected with the main block, the onus is certainly on that body to show that the portion is not "reasonably required for the full and unimpaired use of the house," *Venkataratnam Naidu* v. *The Collector of Godavari*, 27 Mad. 350. (*Grosvenor* v. *The Hampstead Junction Ry. Co.*, 26 L. J. Ch. 731 ; 1 De. G and J 446 ; *King* v. *The Wycombe Railway Co*, 29 L. J. Ch. 462 ; *Spackman* v. *Great Western Ry. Co.*, 1 Jur. N. S. 790 : 26 L. T. (O. S) 22 ; and *Khairati Lal* v. *Secretary of State*, 11 All. 378, referred to).

The Local Government having appropriated for public purposes some of the out-houses attached to a dwelling-house, and part of the compound in which they were situate, without taking the house with its other out-

houses or appurtenances or the rest of the compound, the owner objected, under sec. 55 of the Act, that the Government should take whole of the property or none. *Held* that the objection must be allowed. *Held* also that the rule was not in England restricted to small or confined areas, and that the test was not whether the part appropriated could be secured from the rest of the property without inconvenience to the owner, *Khairati Lal* v. *Secretary of State*, 11 All 378. (*Grosvenor* v. *The Hampstead Junction Ry. Co.*, 26. L. J. N S. Ch. 731 ; *Cole* v. *The West London and Crystal Palace Ry. Co*, 28 L. J. Ch. 767 : and *King* v. *The Wycombe Railway Company*, 29 L. J Ch. 462, referred to).

Godowns necessary as residence for servants are part and parcel of a building, being a most important part of that building for the purpose of letting it out as a place of residence, *Dalchand Singhi* v. *Secretary of State*, 43 Cal., 665, s. c. 37 I. C. 11.

Where a portion of a holding used for residential purposes was acquired by Government and it was found that the remaining portion was thereby rendered useless for such purposes *Held* that it was of very little importance whether the whole holding formed a "house" within sec. 49 of the Land Acquisition Act, so as to render it obligatory on Government to acquire the whole of it, in as much as compensation to the extent of the value of the entire holding would have to be paid owing to damages caused by severence and to the property being injuriously affected by the acquisition, *Sarat Chandra Bose* v. *Secretary of State*, 10 C. W. N. 250.

A well in a mill compound from which the mill's engine was supplied with water, was held to be a part of the manufactory. The owner may by his conduct waive his right and preclude himself from claiming to have the whole of his house, manufactory or building acquired, *Kharshedji Nasaruananji* v. *Secretary of State*, 5 Bom. H. C. 97.

When land is employed for the purpose of a business not involving manufacture, but portions of it are used for auxiliary manufacturing processes, the whole is not a "manufactory," *Reddin* v. *Metropolitan Board of Works*, 31 L. J. Ch. 660.

A Railway company intended to take a dwelling-house and cottages, all separated from a manufactory carried on by the owner only by a road which cottages, were used as ware-houses, and were the only ware-houses used in connection with the manufactory. *Held* that the cottages were part of the manufactory and the company could be compelled to take the whole manufactory. *Speakman* v *Great Western Ry. & Co.*, I Jur. N. S. 700 : 26. L. J. (O. S.) 22.

Land included in the same wall with tin plate works, and used for the deposit of ashes from the works, *held* to be a part of a manufactory

although the two portions of the property were separated by a road, over which a stranger had a right of way, *Sparrow* v. *Oxford etc., Ry. Co.*, 21 L. J. Ch. 731.

When at the desire of a party, the government is made to acquire the whole land under Sec. 49 (1), a fresh declaration for the *whole* land under sec. 6 is necessary, *Bhagwandas Nagindas* v. *Special Land Acquisition Officer*, 28 I. C. 489, s. c. 17 Bom. L. R. 192.

Appeal: A decision under this section is not an award and is therefore not appealable under sec 54. See *Sarat Chandra Ghose* v. *Secretary of State*, 46 Cal, 861, s. c. 23 C. W. N. 378=50 I. C. 732; also see the cases at p. 135 *post*. This point was raised but not positively decided in *Dalchand* v. *Secretary of State*, 43 Cal., 665, s. c. 37 I. C. 11. The learned judges in this case however maintained at p. 670 of the report that it was never doubted that an appeal would lie from a decision under sec. 49.

When a reference under this section is refused, the High Court can, in revision, set aside the proceedings subsequent to the refusal and require the Collector to proceed according to law, *Krishnadas* v. *L. A. Collector of Pabna*, 16 C. L. J. 165=16 C. W. N. 327=13 I. C. 470. The act of a Collector in making or refusing to make a reference under *proviso* 2 is a judicial act, and the High Court can interfere with such act in revision, *Saraswati Pattack* v. *L. A. Deputy Collector, Champaran*, 2 P. L. J. 204=39 I. C. 650.

Acquisition of land at cost of a local authority or Company.

50. (1) Where the provisions of this Act are put in force for the purpose of acquiring land at the cost of any fund controlled or managed by a local authority or of any Company, the charges of and incidental to such acquisition shall be defrayed from or by such fund or Company.

(2) In any proceeding held before a Collector or Court in such cases the local authority or Company concerned may appear and adduce evidence for the purpose of determining the amount of compensation:

Provided that no such local authority or Company shall be entitled to demand a reference under section 18.

NOTES.

"Local authority" means any Municipal Committee, District Board, Body of Port Commissioners or other authority legally entitled to, or entrusted by the Government with the control or management of any municipal or local fund. Sec. 16 (*a*) of the Land Acquisition (Mines) Act XVIII of 1885. This definition is applicable to Land Acquisition Act. See sec. 17 of that Act and sec. 2 (*3*) of this Act.

Under sec. 50, sub-sec. (2) the company concerned is entitled to appear in any proceeding before a Collector or Court and to adduce evidience "for the purpose of determining the amount of compensation." The reason of this is obvious ; for the company has to pay the compensation. To give effect to this provision of the law, the Board of Revenue has framed a rule (p. 36, Rule 21) which is in these terms ; "When he (Collector) issues notices on the persons interested, he shall at the same time inform the municipal body, Railway or other company, who have under sec. 50 (*1*) to defray the charges of the Land Acquisition of the day on which the enquiry under sec. 11 of the Act is to be held or to which it may be postponed, or to give such boby or company an opportunity of controlling the claims of the claimants to compensation and of adducing evidence on their part as to the proper amount payable before he made his award." *Ezra* v. *Secretary of State*, 30 Cal., 36 at pp. 82, 85 and 89 : 7 C. W. N. 249.

Section 50 of the Act limits the authority of a company or local authority, to appear or adduce evidence only. The company can at best watch the proceedings or assist the Secretary of State, but has no right to demand a reference under sec. 18. See *Municipal Corporation of Pabna* v. *Jogendra Narain*, 13 C. W. N. 116. The interests of the local authorities must be subservient to that of the Government which aquires and it would be dangerous to allow private individuals, local authorities and companies to intervene in a proceeding under Part III of the Act. It is only in extreme cases where it is patent that injustice would be done to a private individual for whose benefit the acquisition is to be made that an application for permission to appeal may be allowed. No such case had been made out by the municipality. In the present case, the Government having declined to appeal, the High Court refused to give permission to the municipality to appeal, *The Chairman of the Howrah Municipality*, 9 C. W. N. 66n.

"To sec. 50 we have added at the deisre of the Government of Bombay, a clause permitting the appearance before the Collector or the Court of the representative of a local authority or company on whose behalf land is being aquired. We cannot however agree that this authority should be permitted to appeal from the Collector's award. We have not given to Government itself power to make this appeal, because the Collector is only

the agent of Government in the acqiusition of land ; his action is taken under rules laid down for his guidance, which include a preliminary valuation : and these rules ordinarily provide and ought to provide that, where the Collector finds cause to anticipate that his eventual award will substantially exceed his provisional estimate, he shall stay proceedings till he receives the further instructions of higher authority. No local authority or company is compelled to proceed under the Land Acquisition Act. If it can procure its land more cheaply by private negotiation, it is entirely at liberty to do so : but if it elects to set in motion the very special powers given to Government for public objects, it can expect no higher privileges and powers than those given to Government itself." *Select Committee's Report, dated 22nd March, 1893.*

Exemption from stamp-duty and fees.

51. No award or agreement made under this Act shall be chargeable with stamp-duty, and no person claiming under any such award or agreement shall be liable to pay any fee for a copy of the same.

Notice in case of suits for anything done in pursuance of Act.

52. No suit or other proceeding shall be commenced or prosecuted against any person for anything done in pursuance of this Act, without giving to such person a month's previous notice in writing of the intended proceeding, and of the cause thereof, nor after tender of sufficient amends.

NOTES.

"With respect to the objection under sec. 52 of the Land Acquisition Act which applies chiefly to the Bank of Bengal, we are of opinion that the section in question refers to a tortious act done under the enactment. It is not alleged that save and except the proceedings taken, there has been any act done in pursuance thereof. We think therefore that the objections in bar so to speak, taken on behalf of the defendants must be overruled," *Ezra* v. *Secretary of State*, 7 C. W. N. 249 at p. 266 : 30 Cal. 36 at p. 73.

The plaintiff sued to recover from the defendants the sum of Rs. 20, which had been paid to one of them as compensation awarded under the Land Acquisition Act and also to have the plaintiff's title declared to two cottahs of land which she claimed. *Held*, that it was not a suit for the

purpose of setting aside an award nor it was a suit against any person for anything done in pursuance of the Land Acquisition Act. An award under the Land Acquisition Act cannot be affected by a suit to recover from the party to whom compensation has been awarded and to have plaintiff's title declared to the land concerned, *Kaminee Debia v. Protap Chunder Sanyal*, 25 W. R. 103.

A decree which apportions compensation made under the Land Acquisition Act by a Court to whom such matter has been referred is final and cannot be questioned otherwise than by the appeal permitted by the Act, *Nilmonee Singh Deo* v. *Ram Bundoo Roy*, 4 Cal., 757 : 3 C. L. R. 211. On appeal to the P. C., I. L. R. 7 Cal. 388 : 10 C. L. R. 393.

Sub-sec. (2) of sec. 10 of the Railways Act (IX of 1870) does not bar a suit for compensation in the Civil Court, when the Collector refuses to adjudicate upon the claim put forward by the owner. A suit will lie in the Civil Court in respect of claim for damages, which could not be foreseen at the time of the acquisition proceedings, *Rameswar Singh* v. *Secretary of State*, 34 Cal. 470 : 11 C. W. N. 356 : 5 C. L. J. 669.

Limitation of suits against Government for compensation : A suit to recover compensation for land acquired, instituted on the refusal of the Collector to award any compensation under the Land Acquisition Act, is governed by Art. 126 of the Limitation Act, the right to sue accruing either from the date of the acquisition or the refusal by the Collector to award compensation, *Rameswar Singh* v. *Secretary of State*, I. L. R. 34 Cal. 470 : 11 C. W. N. 356 : 5 C. L. J. 669. (I. L. R. 22 Bom. 802, explained).

Where a Collector fails to pay or deposit in Court the amount awarded by him under the Land Acquisition Act, a suit would lie against him for the recovery of the amount so awarded and Art. 17 of the Limitation Act IX of 1908 provides for such a suit, *Nilkhant Ganesh* v. *Collector of Thana*, 22 Bom. 802, F. B.

Art. 18 of the Limitation Act refers only to suits for compensation for non-completion of, and refusal to complete, the acquisition ; if the acquisition had been made, a suit for damages for refusing to make an award would be governed by Art. 120 of the Limitation Act, *Mantharavadi Venkayya* v. *Secretary of State*, I. L. R. 27 Mad, 535 : 14 M. L. J. 173. Referred to in 34 Cal. 470 : 11 C. W. N. 356=5 C. L. J. 669.

A suit for share of compensation by landlord against tenant, where the whole amount of compensation was withdrawn by the latter, is governed by Art. 62 or Art. 120 of the Limitation Act, and not by Art. 36, *Khetter Kristo Mitter* v. *Kumar Dinendra Narain*, 3 C. W. N. 202. See also

Nundo Lall v. *Meer Aboo Mahomed*, I. L. R. 5 Cal. 597, where compensation was refused and the party referred to a civil suit after the period of limitation had expired, a suit by him against Government to recover it was held barred, *James Hills* v. *Magistrate of Nuddia*, 11 W. R. I.

Code of Civil Procedure to apply to proceedings before Court.

53. Save in so far as they may be inconsistent with anything contained in this Act, the provisions of the Code of Civil Procedure shall apply to all proceedings before the Court under this Act.

NOTES.

N. B.—This section provides for proceedings *before the Court and not the Collector*. See Notes under *Collector* at p. 11 *ante*.

Procedure: Sec. 53 makes the provisions of the Code of Civil Procedure generally applicable to all proceedings before the Land Acquisition Judge, the claimant being in the position of the plaintiff. *Bhandi Singh* v. *Ramadhin Rai*, 2 C. L. J. 359 : 10 C. W. N. 991. See also *In re Land Acquisition Act*, 30 Bom. 341 : 7 Bom. L. R. 881 and *Nilkanta Ganesh* v. *Collector of Thana*, 22 Bom 802, F. B. *Bansilal* v. *Collector of Saharanpur*, 4 A. W. N. 88. So a L. A. Court has all the ordinary powers of a Judge under the C. P. Code, and can necessarily call for records whenever necessary, *Naresh Ch. Bose* v *Hiralal Bose*, 43 Cal, 239, s. c. 20 C. W. N. 36)=34 I. C 263. The L. A. Judge has jurisdiction to make an order for discovery under O. xi, R. 12 of the C. P. Code. *British India S. N. Co.* v. *Secretary of State*, 33 Cal. 230=12 C. L J. 505=15 C. W. N. 87=8 I. C. 107. A L. A. Court has inherent jurisdiction to consolidate proceedings, of course subject to the question of loss of revenue in Court-fee resulting from consolidation. Such consolidation is possible even at the appellate stage, *Vengu Naidu* v. *Deputy Collector of Madura*, 34 M. L. J. 279=45 I. C. 468.

Sec. 53 makes the Code of Civil Procedure applicable generally to all proceedings under the Land Acquisition Act, except where inconsistent with anything in the Act itself. An adjudication therefore, as to compensation or apportionment of compensation is tantamount to a decree within the meaning of sec. 2 of the Civil Procedure Code though called an award in the Act, *Zemindars of Dhar* v. *Rana*, 53 P. R. 1906 : 103 P. L. R. 1906. Though the C. P. Code applies to references under the Act, still the addition of parties by the L. A. Court cannot be allowed. The C. P. Code applies only when not inconsistent with anything in the Act. But as the L. A. Court can limit his enquiry only to as between the parties to the reference, addition of new parties becomes inconsistent with this Act.

Therefore it has been maintained that the L. A. Court cannot add new parties nor can it award any compensation to one who joined in the proceeding for the first time in the Court of the Special Judge without applying to the Collector for any order of reference, *Mahananda Roy* v. *Srish Chandra*, 7 I. C. 10. Cf. *Kishan Chand* v. *Jagannath*, 25 All. 133=(1902) A. W. N 215. But in a Calcutta case the purchaser of the property at a revenue sale pending the Collector's proceeding was allowed to be made a party, *Promothanath* v. *Rakhaldas*, 11 C. L J. 420. A person attaching the interest of one of the claimants is entitled to be joined as a party, *Golab Khan* v. *Bholanath*, 7 I. C. 481 (Cal.). There is nothing in this Act which forbids the application of O. xlvii of the C. P. Code, therefore a Land Acquisition Court can hear an application for review, *Sakti Narain* v. *Bir Singh*, 58 I. C. 510=5 P. L. J. 253=1 P. L. T. 219. But this view has not found favour with the Madras High Court according to which a Land Acquisition Judge has no jurisdiction to review his award, *Mulambath Kunhammad* v. *Parakt Kathiri*, 31 M L. J. 827=5 L. W. 472=38 I. C. 373. Where an award is made without hearing a party interested and without giving him an opportunity of being heard, the Court has power, even apart from the provisions of o ix of C. P. Code, to change or modify the award after hearing the party interested, *Ibid.* Even if it be held that the L. A. Court has no power to review its own judgment, the High Court will not interfere in revision with a judgment on review simply on the ground of want of jurisdiction if such a course will operate inequitably or result in substantial injustice to a party, *Ibid.*

A case dismissed for default may be restored to file under o. ix, r. 4 if sufficient cause is shown, *Behary Lal* v. *Nanda Lal*, 11 C. W. N. 430.

Where under sec. 30 of the Land Acquisition Act, the Collector has referred to the District Judge a dispute as to the apportionment of compensation, it is not *ultra vires* of the District Judge to add a party to the proceedings before him having regard to sec. 53 of the Act and sec. 32 of the Civil Procedure Code, *Kishana Chand* v. *Jagannath Prasad*, 25 All. 133.

Compromise :—Agreement between parties as to the amount of compensation is enforceable, *Fort Press Co. Ltd.* v. *Municipal Corporation of Bombay*, 58, I. C. 621.

Costs : See p. 55 *ante* (under sec. 22.)

Pleader's fee : The pleader's fee is to be allowed at 5 p. c. on difference between the award of the Collector and that of the Judge, *Ram Saran Das* v. *Collector of Lahore*, 9 I. C. 228=9 P. W. R. 1911. At Allahabad, they follow a different principle, *Kanhaiya Lal* v. *Secretary of State*, 14 I. C. 214. Also see the *notes* at p. 55 under sec. 22 *ante*.

54. Subject to the provisions of the Code of Civil Procedure, 1908, applicable to appeals from original decrees, and notwithstanding anything to the contrary in any enactment for the time being in force, an appeal shall only lie in any proceedings under this Act to the High Court from the award or from any part of the award, of the Court and from any decree of the High Court passed on such appeal as aforesaid an appeal shall lie to His Majesty in Council subject to the provisions contained in section 110 of the Code of Civil Procedure, 1908, and Order XLV thereof.

Appeals in proceedings before Court.

NOTES.

This section is new and has been substituted in the place of old sec. 54 by the Amendment Act of 1921 (Act xix of 1921.)

The term "award" used in sec. 54 of Act I of 1894, includes an order for the apportionment of compensation made under sec. 30 and an appeal from such order of apportionment lies to the High Court. The decision of the Court, whatever may be its nature, whether passed on a reference under sec. 18 or sec. 30 or under sec. 32 whether the dispute was between the Government and the party interested or only among the parties interested *inter se* is an award, *Mulambath* v. *Acharath*, 31 M. L. J. 827 : 5 L. W. 472 : 38 I. C. 373. Appeal to the High Court lies *only* from an *award*, or from any part of an award. So if there is nothing that can be called an *award*, the High Court can interfere only by way of revison and not by appeal, see *Collector* of *Akola* v. *Anand Rao*, 7 N. L. R. 88; also see *post*, p. 137 See also *Ardeshir Mancherji* v. *Asst. Collector, Poona*, 10 Bom. L. R. 517. Also see sec. 26(2).

An order of the L. A. Judge refusing to restore a claim case by setting aside a decree passed *ex parte* for default of the claimant, is not award and is therefore not appealable under this section, *Hasun Molla* v. *Tasiruddin*, 39 Cal. 393, s. c. 15 I. C. 925.

An order under s. 49 of the L. A. Act is not an "award" and is not appealable, *Sarat Ch. Ghose* v. *Secretary of State*, 46 Cal., 861 : 23 C. W. N. 378=50 I. C. 732, *Giles Seddan* v. *Deputy Collector of Madras*, 17 I. C. 117; *Mulraj Khatav* v. *Collector of Poona*, 15 Bom. L. R. 802=21 I. C. 179. For the same reason it will be premature to appeal against a preliminary order

of the District Judge, holding that the question of compensation was not included in the order of the Collector under S. 18 of the Act, before the passing of the final award by the District Court, *Mowlo Sabzali* v. *Dewan Mushtak Singh* 4 S. L. R. 34. No appeal lies against an order rejecting the petition of an attaching creditor of a claimant to be added as a party on the ground that he has no *locus standi*; *Golab Khan* v. *Bholanath*, 7 I. C. 481 (Cal.)

An appeal lies to the High Court from a decision of the Chief Judge of the Small Causes Court of Bombay granting compensation to the owner of land laken by the Municipality in case of a set back under the Municipal Act III of 1888, secs. 298, 299 and 301. *Municipal Commissioner for the City of Bombay* v. *Syed Abdul Huk*, 18 Bom., 184.

An appeal will lie to the High Court from an order of the District Judge made upon reference by the Collector under secs. 18 and 19 of the Land Acquisition Act, as to the disposal of compensation awarded for land acquired under the Act (23 Cal., 526, followed). In an appeal from the order of the District Judge above referred to the memorandum of appeal must be stamped as an appeal from the original decree, *Sheo Ratan Rai* v. *Mohri*, 21 All., 354. But in *Harish Chandra* v. *Bhaba Tarini*, 8 C. W. N. 321, it has been held that the order of the Judge dismissing an application for payment of compensation awarded by him, is not a decree within the meaning of sec. 2, C. P. Code, and the Court-fee payable in an appeal against such an order is two rupees and not as computed on the amount in deposit. The right of appeal is *subject to the provisions of the C. P. Code*, therefore the ordinary rules of that Code will apply to an appeal under this section. So a party can appeal not only against the whole decree but also against parts of it. Where the Collector preferred an appeal against the valuation of some of the plots, it was *held* that it was comptent to the claimant to file a memorandum of objections in respect of other plots which were covered by the petition, though not the subject of appeal, *Deputy Collector*, *Madura* v. *Muthirula Mudali*, 35 M. L. J. 83=(1918) M. W. N. 458=48 I. C. 1003=24 M. L. T. 83=8 L. W. 271. For the same reason sec. 98 of the C. P. Code applies to appeals under this section. So where the two Judges of an appellate Bench differ, the judgment of the lower Court will be taken as being confirmed under sec. 98 (2) C. P. Code, *Manavikraman* v. *Collector of Nilgris*, 41 Mad. 943=35 M. L. J. 110; (1918) M. W. N. 540=24 M. L. T. 155=8 L. W. 261=49 I. C. 27. In an appeal against an order directing investment under s. 32, it was held, that the relief sought in the appeal could be estimated at a money value, and therefore the case fell within s. 8 of the Court-fees Act and an *ad valorem* Court-fee ought to have been paid on the memorandum of

appeal computed according to the difference between the amount awarded and the amount claimed by the appellant, *S. M. Trinayani* v. *Krishna Lal*, 39 Cal., 906, s. c. 17 C. W. N. 933=14 I. C. 724.

But when the appeal against the award is preferred by the *Secretary of State*, only a Court-fee of Rs. 10 is required under Art. 17 (4), Sch. II of the Court-fees Act, *Secretary of State* v. *Basawa Singh*, 17 I. C. 764, s. c. 19 P. W. R. 1913 : 57 P. R. 1913.

There is no appeal against an order of the District Judge allowing a Hindu widow to withdraw the compensation money deposited by the Collector under sec. 31 of the Act, *Biswas Nath* v. *Bidhumukhi*, 19 C. W. N. 1290, s. c. 31 I. C. 677. An order under sec. 32 directing investment of compensation money in Government securities is however held to be appealable, *Trinayani Dasi* v. *Krishnalal*, 6 I. C. 157. No appeal lies to the High Court against an order of a District Judge dismissing a reference under the L. A. Act on the ground that it is barred by limitation, *Debeswar Surma* v. *Collector Sibsagar*, 39 I. C. 637. There is no appeal again against an order dismissing a reference on the ground that it is time-barred under sec. 18 (proviso), *Ghulam Mohyuddin* v. *Secretary of State*, 48 P. R. 1914=208 P. L. R. 1914=149 P. W. R. 1914=24 I. C. 379.

An Additional Judge appointed to hear cases under the Land Acquisition Act, 1870, is a District Judge within the meaning of sec. 39 of the Act. Under sec. 647 of the Civil Procedure Code, an appeal from the decision of an Additional Judge lies to the High Court, *Paresh Nath Chatterji* v. *Secretary of State*, 16 Cal., 31. Cf. *Jogesh Chandra* v. *Rasik Lal*, 50 I. C. 690 ; *Jagabandhu Talukdar* v. *Nanda Lal*, 50 I. C. 798. But the Bombay High Court has ruled that if in a compensation case heard by an Assistant Judge the amount does not exceed Rs. 5000, the appeal lies to the District Court and not to the High Court, *Ranchhodbhai* v. *Collector of Kaira*, 33 Bom. 371=11 Bom. L. R. 317=2 I. C. 492 ; *Ahmedbhoy Habibhoy* v. *Waman Dhondu*, 38 Bom. 337=23 I. C. 614=16 Bom. L. R. 72. But under the present section, such a contention is not possible because the section says that an appeal *only* lies to the High Court. The first object of the Bill is "to secure the right of appeal to the High Court whatever the amount of claim of compensation may be. The amendment is necessitated because the High Court of Bombay has held that where a claim under Rs. 5,000 in value has been decided by a Court of first instance, an appeal lies to the District Court in virtue of section 16 of the Bombay Civil Courts Act, 1869 (XIV of 1869), and the right of appeal given by section 54 of the L. A. Act, 1894 is thus exhausted and no further appeal lies to the High Court (Cf. *Nathubai* v. *Manordas*, 14 Bom. L. R. 325 and *Ahmedbhoy* v. *Waman*, 16 Bom. L. R. 72)." See *Statement of Objects and Reasons.*

It has also been held that there is no second appeal in such cases, *Nathan-*

bhai Narandas v. *Manordas Laldas*, 36 Bom., 360=14 Bom. L. R. 325=15 I. C. 512. The position of judge sitting on the original side of the Chief Court of Burma is quite different from that of a District Judge; he exercises the powers of a High Court; therefore there is no appeal from an award made by him; *Collector of Rangoon* v. *Chandrama*, 28 I. C. 260, s. c., 8 L. B. R. 163. But read the notes under the heading, "Privy Council Appeal."

An order made by a Court directing a party to refund the money taken out of Court under a previous order is not an award within the meaning of sec. 54 of the Act, nor does it come under any of the orders mentioned in sec. 104, Civil Procedure Code, 1908. No appeal therefore lies from such an order, *Nabin Kali Debi* v. *Banalata Debi*, 32 Cal. 921 : 2 C. L. J. 595 ; 21 All. 354 and 26 Mad. 287, distinguished).

An appeal lies against the decision of the Court under sec. 30 as it is an award, *Hazura Singh* v. *Sundar Singh*, 53 I. C. 589=97 P. R. 1919. An appeal lies against the award in so far as it directs the money to be invested in the purchase of the Government promissory notes. The language of sec. 54 of the Land Acquisition Act is wide enough to admit of an appeal in such a case, *Shiva Rao* v. *Nagappa*, 29 Mad. 117.

The order of the Land Acquisition Judge deciding that a certain person had no *locus standi* to contest the sufficiency of the award was passed on a petition of objection preferred on behalf of the Government. But the final order confirming the award was made on a subsequent date. Both orders having been appealed against; *Held*, that no appeal lies against the previous interlocutory order, *Gaulstaun* v. *Secretary of State*, 10 C. W. N. 195.

Where a property is acquired under section 10 of the Ancient Monuments Preservation Act (VII of 1914) the owner thereof has the full rights he enjoys under the Land Acquisition Act, including the right to appeal to the High Court under this section, *Vishnu Narain* v. *District Deputy Collector, Kolaba*, 43 I. C. 480=19 Bom. L. R. 937.

The decision of the High Court in an appeal under this section is not a "judgment" within the meaning of clause 15 of the Letters Patent, *Manavikraman Malpad* v. *Collector of Nilgris*, 41 Mad. 943=35 M. L. J. 110=(1918) M. W. N. 540=24 M. L. T. 155=8 L. W. 261=49 I. C. 27.

In cases under the L. A. Act the decree awarded in appeal must be limited to the amount for which Court-fee has been paid on the memorandum of appeal, *Mahomed Ali* v. *Secretary of State*, 30 Cal. 501.

In rejecting an application made under sec. 18, cl. *(1)* of the Land Acquisition Act asking for a reference to the Civil Court, the Collector acts judicially, and his order is subject to revision by the High Court. *The Administrator-General of Bengal* v. *The Land Acquisition Collector of 24 Pergs.*, 12 C. W. N. 241. (32 Cal., 605 ; 9 C. W. N. 454, referred

to.) See also *Krishnadas* v. *Collector of Pabna*, 16 C. L. J. 165=16 C. W. N. 327=13 I. C. 470; *Parameswara* v. *L. A. Collector, Palghat*, 42 Mad. 231, s. c. 49 I. C. 659 and the cases noted at pp. 29-30. The legality of the proceeding before the Land Acquisition Collector and of the reference to the Court can be enquired into by the High Court of its own motion, *Rajah Shyam Chunder* v. *Secretary of State*, 35 Cal., 525, s. c. 12 C. W. N. 569: 7 C. L. J. 445. Cf. *Collector of Akola* v. *Ananda Rao*, 7 N. L. R. 88=11 I. C. 690.

In an appeal in a valuation case the only person who can be impleaded as a respondent is the Secretary of State, and if he is not made a respondent when the appeal is filed, there is in fact and in law no appeal at all. An appeal cannot be said to have been presented when the name of the only possible respondent is omitted from the memorandum of appeal. Subsequent bringing in of such a respondent on the record cannot cure the original defect, *Fakir Chand* v. *Municipal Board of Hazrao*, 59 P. L. R. 1913=88 P. W. R. 1913=18 I. C. 37=59 P. R. 1913.

Limitation: The limitation for a Land Acquisition appeal to the High Court is 90 days, being governed by Art. 156 of Schedule I to the Limitation Act. The expression an appeal under the Civil Procedure Code "in that article is not restricted to an appeal the right to prefer which is conferred by the Code of Civil Procedure. It means an appeal the procedure with respect to which from its inception is governed by the C. P. Code, *Ramaswami Pillai* v. *Tahsildar of Madura*, 43 Mad. 51 : 53 I. C. 405 : 37 M. L. J. 110 : 26 M. L. T. 136 : 10 L. W. 226 : (1919) M. W. N. 565 :

Privy Council Appeal: The old section 54 did not contain any provision as to any appeal to His Majesty in Council with respect to Land Acquisition cases, consequently under that section it has been held that there is no right of appeal to the Privy Council in L. A. cases; See *Rangoon Botatoung Company Ld.* v. *Collector of Rangoon*. 39 I. A. 197 : 40 Cal. 21=16 C. L. J. 245=16 C. W. N. 961=23 M. L. J. 276=(1912) M. W. N. 781=12 M. L. T. 195=14 Bom. L. R. 833=10 A. L. J. 271=16 I. C. 188=6 L. B. R. 150. See also *Mst. Shams-ul-nissa* v. *Secretary of State*, 18 I. C. 489=71 P. W. R. 1913=105 P. L. R. 1913; *Special Officer, Salsette Bldg. Sites.* v. *Dosabhai*, 17 C. W. N, 421=20 I. C. 763 (P. C.)=14 Bom. L. R. 1194; *Ramsoshi* v. *Grey*, 18 C. L. J. 123.

But the law has now been changed by the present section 54 which has been substituted in the place of the old section by the L. A. (Amendment) Act, (Act XIX of 1921). Now an appeal will lie to His Majesty in Council. The object of this amendment has been thus stated :—The second object of the bill is "to secure the right of appeal to His Majesty in Council in cases where the amount in dispute in the appeal is Rs. 10,000 or upwards

and the appeal involves some substantial question of law." An appeal to His Majesty in Council was allowed in land acquisition proceedings as a matter of course subject to the provisions of section 109 and 110 of the C. P. Code, 1908. But the Judicial Committee of the Privy Council held in *Rangoon Botatung Co. Ld.* v. *Collector of Rangoon*, 39 I. A. 197 that in proceedings under L. A Act, 1894, no appeal lay to the Privy Council from the award of the Chief Court of Lower Burma in as much as section 54 of the L. A. Act gave only a special and limited right of appeal to the High Court from the award of the Court and therefore no further appeal lay to His Majesty in Council. In the light of this pronouncement, the High Court of Bombay has also recently held that no appeal lies to His Majesty in Council from its decision under the L. A. Act, 1894, *Special Officer, Salsette Building Sites* v. *Dossabhai*, 14 Bom. L. R 1194 The proposed amendment is intended to give in express terms a right of appeal to His Majesty in Council—a right which was not doubted and which was often exercised till the decision in the Rangoon Case." *Statement of Objects and Reasons*, published in the Gazette of India, dated the 5th March, 1921, part v at p. 62.

It is worth our while to note that the above object has not been fully given effect to in the amended section. Because in the above Rangoon case (39 I. A. 197=40 Cal. 21) the Judicial Committee held that there was no appeal from the decision of the Chief Court of Lower Burma. Now, the Chief Court of Lower Burma can hear references as an Original Court. But under section 54 only the High Court decrees made *on appeal* are open to an appeal to the Privy Council. Consequently it follows that the *original* decisions of the Chief Court of Lower Burma cannot even now be appealed from.

Power to make rules

55. (1) The Local Government shall have power to make rules ([1]) consistent with this Act for the guidance of officers in all matters connected with its enforcement, and may from time to time alter and add to the rules so made.

(2) The power to make, alter and add to rules

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[1] For rules under this section for—

(1) Ajmere-Merwara, *see* Ajmere List of Local Rules and Orders, Ed. 1902, p. 12.

(2) Central Provinces, *see* Central Provinces List of Local Rules and Orders, Ed. 1896, p. 59.

(3) United Provinces of Agra and Oudh, *see* North-Western Province and Oudh List of Local Rules and Orders, Ed. 1894, p. 40.

under sub-section (1) shall be subject to the condition of the rules being made, altered or added to after previous publication.

(3) All such rules, alterations and additions shall when sanctioned by the Governor-General in Council, be published in the Official Gazette, and shall thereupon have the force of law.

NOTES.

This section empowers the Local Government to make rules consistent with this Act for the guidance of officers in all matters connected with its enforcement. The rules framed by the Local Governments must receive the sanction of the Governor-General in Council and must be published in the local official gazette, otherwise they will not have the force of law. The rules framed by the Local Governments are to be found in the Appendix.

The Land Acquisition Proceedings are under the control and in the charge of the Board of Revenue as a department of Government. The Board has accordingly issued certain general rules for the guidance of the officers to whom the work of acquisition is, from time to time, entrusted. If those rules or instructions are in contravention of the express provisions of the law, they cannot make an act done by such officers as valid. But where the rules are in furtherance of the provisions of the Act, in order to better enable the officers of Government to carry out the requirements of the law, no question of *ultra vires* arises. If the officer concerned acted in accordance with the rules prescribed by the Board, that would be evidence of his *bonafides*. The manual containing the rules issued by the Board is admissible in evidence, *Ezra* v. *Secretary of State*, 30 Cal., 36 at p. 83 : 7 C. W. N. 249.

Although the rules issued by the Board of Revenue for the guidance of the executive officers have not the force of law, still they are admissible in evidence in proceeding before the Land Acquisition Judge.

ACT No. XIX OF 1921.

An Act further to amend the Land Acquisition Act, 1894.

WHEREAS it is expedient further to amend the Land Acquisition Act, 1894; It is hereby enacted as follows :—

Short title. 1. This Act may be called the Land Acquisition (Amendment) Act, 1921.

Amendment of section 26, Act I of 1894. 2. Section 26 of the Land Acquisition Act, 1894 (hereinafter referred to as the said Act), shall be renumbered 26 (*I*), and to the said section the followiug sub-section shall be added namely :—

"(*2*) Every such award shall be deemed to be a decree and the statement of the grounds of every such award a judgment within the meaning of section 2, clause (*2*), and section 2, clause (*9*), respectively of the Code of Civil Procedure, 1908."

Substitution of new section for section 54, Act I of 1894. 3. For section 54 of the said Act, the following section shall be substituted, namely :—

"54. Subject to the provisions of the Code of Civil Procedure, 1908, applicable to appeals from original decrees, and notwithstanding anything to the contrary in any enactment for the time being in force, an appeal shall only lie in any proceedings under this Act to the High Court from the award, or from any part of the award, of the Court and from any decree of the High Court passed on such appeal shall lie to His Majesty in Council subject to the provisions contained in section 110 of the Code of Civil Procedure, 1908, and in Order XLV thereof."

THE LAND ACQUISITION (MINES) ACT,

BEING

ACT XVIII OF 1885.

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THE LAND ACQUISITION (MINES) ACT

BEING

ACT No. XVIII OF 1885.

PASSED BY THE GOVERNOR-GENERAL OF INDIA IN COUNCIL.

(Received the assent of the Governor-General on the 16th October 1885.)

An Act to provide for cases in which Mines or Minerals are situate under land which it is desired to acquire under the Land Acquisition Act, 1870.

WHEREAS it is expedient to provide for cases in which mines or minerals are situate under land which it is desired to acquire under the Land Acquisition Act, 1870; it is hereby enacted as follows :—

Short title, commencement and local extent.

1. (1) This Act may be called The Land "Acquisition (Mines) Act, 1885"; and

(2) It shall come into force at once.

(3) It extends in the first instance to the territories administered by the Governor of Madras in Council and the Lieutenant-Governor of Bengal but any other Local Government may from time to time by notification in the Official Gazette, extend this act to the whole or any specified part of the territories under its administration.

Saving for mineral rights of the Government.

2. Except as expressly provided by this Act, nothing in this Act shall affect the right of the Government to any mines or minerals.

3. (1) When the Local Government makes a declaration under section 6 of the Land Acquisition Act, 1870, that land is needed for a public purpose or for a Company, it may, if it thinks fit, insert in the declaration a statement that the mines of coal, iron-stone, slate or other minerals lying under the land or any particular portion of the land, except only such parts of the mines or minerals as it may be necessary to dig or carry away or use in the construction of the work for the purpose of which the land is being acquired, are not needed.

Declaration that mines are not deeded.

(2) When a statement as aforesaid has not been inserted in the declaration made in respect of any land under section 6 of the Land Acquisition Act, 1870, and the Collector is of opinion that the provisions of this Act ought to be applied to the land, he may abstain from tendering compensation under section 11 of the said Land Acquisition Act in respect of the mines, and may—

(*a*) when he makes an award under section 14 of that Act, insert such a statement in his award;

(*b*) when he makes a reference to the Court under section 15 of that Act, insert such a statement in his reference; or

(*c*) when he takes possession of the land under section 17 of that Act, publish such a statement in such manner as the Governor-General in Council may from time to time prescribe.

(3) If any such statement is inserted in the declaration, award or reference, or published as aforesaid, the mines of coal, ironstone, slate, or other minerals under the land or portion of the land specified in the statement, except as aforesaid, shall not vest in the Government when the land so vests under the said Act.

4. If the person for the time being immediately entitled

to work or get any mines or minerals lying under any land so acquired is desirous of working or getting the same, he shall give the Local Government notice in writing of his intention so to do sixty days before the commencement of working.

Notice to be given before working mines lying under land.

5 (1) At any time or times after the last receipt of a notice under the foregoing section and whether before or after the expiration of sixty days, the Local Government may cause the mines or minerals to be inspected by a person appointed by it for the purpose; and

Power to prevent or restrict working.

(2) If it appears to the Local Government that the working or getting of the mines or minerals, or any part thereof, is likely to cause damage to the surface of the land or any works thereon, The Local Government may publish in such manner as the Governor-General in Council may, from time to time, direct, a declaration of its willingness, either—

(*a*) to pay compensation for the mines or minerals still unworked or ungotten, or that part thereof, to all persons having an interest in the same; or

(*b*) to pay compensation to all such persons in consideration of those mines or minerals, or that part thereof, being worked or gotten in such manner and subject to such restrictions as the Local Government may in its declaration. specify.

(3) If the declaration mentioned in case (*a*) is made, then those mines or minerals or that part thereof, shall not thereafter be worked or gotten by any person.

(4) If the declaration mentioned in case (*b*) is made, then those mines or minerals, or that part thereof, shall not thereafter be worked or gotten by any person save in the manner and subject to the restrictions specified by the Local Government.

Mode of determining persons interested and amount of compensation.

6. When the working or getting of any mines or minerals has been prevented or restricted under section 5, the persons interested in those mines or minerals and the amounts of compensation payable to them respectively shall, subject to all necessary modifications, be ascertained in the manner provided by the Land Acquisition Act, 1870, for the ascertaining the persons interested in the land to be acquired under that Act, and the amounts of compensation payable to them, respectively.

If Local Government does not offer to pay compensation, mines may be worked in a proper manner.

7. (1) If before the expiration of the said sixty days the Local Government does not publish a declaration as provided in section 5, the the owner, lessee or occupier of the mines may, unless and until such a declaration is subsequently made, work the mines or any part thereof in a manner proper and necessary for the beneficial working thereof, and according to the usual manner of working such mines in the local area where the same are situate.

(2) If any damage or obstruction is caused to the surface of the land or any works thereon by improper working of the mines, the owner, lessee or occupier of the mines shall at once, at his own expense, repair the damage or remove the obstruction, as the case may require.

(3) If the repair or removal is not at once effected, or, if the Local Government so thinks fit, without waiting for the same to be effected by the owner, lessee or occupier, the Local Government may execute the same and recover from the owner, lessee, or occupier the expense occasioned thereby.

Mining communication.

8. If the working of any mines is prevented or restricted under section 5, the respective owners, lessees and occupiers of the mines, if their mines extend so as to lie on both sides of the mines the working of which is prevented or restricted, may cut and make such and so many airways, headways, gateways or water-levels through the mines,

measures or strata, the working whereof is prevented or restricted, as may be requisite to enable them to ventilate, drain and work their said mines; but no such airway, headway, gateway or water-level shall be of greater dimensions or section than may be prescribed by the Governor-General in Council in this behalf, and, where no dimensions are so prescribed, not greater than eight feet wide and eight feet high, nor shall the same be cut or made upon any part of the surface or works, or so as to injure the same or to interfere with the use thereof.

Local Goverment to pay compensation for injury done to mine

9. The Local Government shall, from time to time, pay to the owner, lessee or occupier of any such mines extending so as to lie on both sides of the mines, the working of which is prevented or restricted, all such additional expenses and losses as may be incurred by him by reason of the severance of the lands lying over those mines or of the continuous working of those mines being interrupted as aforesaid, or by reason of the same being worked in such manner and under such restrictions as not to prejudice or injure the surface or works, and for any minerals not acquired by the Local Government which cannot be obtained by reason of the action taken under the foregoing sections; and if any dispute or question arises between the Local Government and the owner, lessee or occupier as aforesaid, touching the amount of those losses or expenses the same shall be settled as nearly as may be in the manner provided for the settlement of questions touching the amount of compensation payable under the Land Acquisition Act, 1870.

And also for injury arising from any airway or other work.

10. If any loss or damage is sustained by the owner or occupier of the lands lying over any such mines, the working whereof has been so prevented or restricted as aforesaid (and not being the owner, lessee or occupier of those mines), by reason of the making of any such airway or other works as aforesaid, which or any like work it would

not have been necessary to make but for the working of the mines having been so prevented or restricted as aforesaid, the Local Goverment shall pay full compensation to that owner or occupier of the surface lands for the loss or damage so sustained by him.

Power to officer of Local Government to enter and inspect the working of mines.

11. For better ascertaining whether any mines lying under land acquired in accordance with the provisions of this Act are being worked, or have been worked, or are likely to be worked, so as to damage the land or the works thereon, an officer appointed for this purpose by the Local Government may, after giving twenty-four hours' notice in writing, enter into and return from any such mines or the works connected therewith ; and for that purpose the officer so appointed make use of any apparatus or machinery belonging to the owner, lessee or occupier of of the mines, and use all necessary means for discovering the distance from any part of the land acquired to the parts of the mines which have been, are being, or are about to be worked.

Penalty for refusal to allow inspection.

12. In any owner, lessee or occupier of any such mines or works refuses to allow any officer appointed by Local Government for that purpose to enter into and inspect any such mines or works in manner aforesaid, he shall be punished with fine which may extend to two hundred rupees.

If mines worked contrary to provisions of this Act, Local Government may require means to be adopted for safety of land acquired.

13. If it appears that any such mines have been worked contrary to the provisions of this Act, the Local Government may, if it thinks fit, give notice to the owner, lessee or occupier thereof to construct such works and to adopt such means as may be necessary or proper for making safe the land acquired, and the works thereon, and preventing injury thereto ; and if, after such notice, any such owner, lessee or occupier does not forthwith proceed to construct the works.

necessary for making safe the land acquired and the working therein, Local Government may itself construct the works and recover the expense thereof from the owner, lessee or occupier.

Construction of Act when land acquired has been tranferred to a local authority or Company.

14. When a statement under section 3 has been made regarding any land, and the land has been acquired by the Government, and has been transferred to or has vested by operation of law in a local authority or Company, then sections 4 to 13, both inclusive, shall be read as if for the words "the Local Government," wherever they occur in those sections, the words "the local authority or Company, as the case may be, which has acquired the land" were substituted.

Pending cases.

15. (1) This Act shall apply to any land for the acquisition whereof proceedings under the Land Acquisition Act 1870, are pending at the time when this Act comes into force, unless before that time the Collector has made, in respect of the land, an award under section 14 or a reference to the Court under section 15 of that Act, or has taken possession of the land under section 17 of the same.

(2) When the Colloctor has before the said time made an award or reference in respect of any such land or taken possession thereof as aforesaid, and all the person ieterested in the Land, or entitled under the Land Acquisition Act, 1870, to act for persons so interested who have attended or may attend in the course of the proceedings under sections 11 to 15, both inclusive, of the Land Acquisition Act, 1870, consent in writing to the application of this Act to the land, the Collector may by an order in writing direct that it shall apply, and thereupon it shall be deemed to have applied from the commencement of the proceedings; and the Collector shall be deemed as the case may be, to have inserted in his award or reference, or to have published in the prescribed manner, when he took possession, the statement mentioned in section 3 of this Act.

Definition of local authority and Company.

16. In this Act—

(*a*) "local authority" means any municipal committee, district board, body of port commissioners or other authority legally entitled to, or entrusted by the Government with, the control or management of any municipal or local fund ; and

(*b*) "Company" means a Company registered under any of the enactments relating to Companies from time to time in force in British India, or formed in pursuance of an Act of Parliament or by Royal Charter or Letters Patent.

This Act to be read with Land Acquisition Act 1870.

17. This Act shall for the purposes of all enactments for the time being in force, be read with and taken as part of the Land Acquisition Act, 1870.

The Land Acquisition (Mines) Act.

The following cases regarding mineral and sub-soil rights, may help the Collector and the Court in determining the respective rights of the persons interested in the mines and minerals.

Mines and Minerals : For definition of these terms, see *Bell* v. *Wilson* (1866) 34 L. J. Ch. 572 : 35 L. J. Ch. 337 ; *Davrell* v. *Roper* (1855) 24 L. J. Ch. 779 : *Midland Rail & Co* v. *Hunchwood B & T. Co.* (1882) 20 Ch. D 552 ; *Scott* v. *Midland Rail Co.* (1901) I K. B. 317. Also see *Gandoo Mahatto* v. *Nilmoney Singh*, I C. L J. 526 ; followed in 3 C. L. J. 103=10 C. W. N. 17=33 Cal. 462. A reservation of minerals does not necessarily include every substance which can be got from underneath the surface of the earth for the purpose of profit. The words "mines and minerals" in any particular grant (must be given the meaning which, judged from the whole of the deed, the parties may be taken to have intended. *Lord Provost and Magistrate of Glasgow* v. *Farie*, 13 App. Cas. 567 followed. *Hext* v. *Gill*, L. R. 7 Ch. App. 699 referred to. When a grantor of land has reserved to himself the right to underground coal and limestone, he is entitled to egress and ingress for the purpose of reasonably working the mine, but he is bound to do no more damage to the surface than is absolutely necessary, to protect the grantee's right of support and to compensate him for any injury to the surface of the soil. *Gandoo Mahata Nilmonee Singh*, 1 C. L. J. 526.

Where a lessor in granting a lease of surface lands had excepted the minerals. '*Held*' that, in excepting the minerals, the lessor impliedly reserved to himself as a necessary incident the right to dig for and win them. The reservation of mineral rights apart from the surface rights must be taken to carry as incident to it the power not only to go upon the land and work the minerals known to be underground, but to go on the land to conduct the ordinary preliminary operations by boring or otherwise to ascertain, when it is not known, if the minerals are underground. *Rameswar Malia* v. *Ram Nath*, 33 Cal. 492 ; 3 C. L. J. 103 : 10 C. W. N. 17 (1 C. L. J. 526 p 531 referred to).

Where a Zemindar grants a tenure in lands within his Zemindari, and it does not clearly appear by the terms of the grant that a right to the minerals is included the minerals do not pass to the grantee. *Raghunath Roy* v. *Raja Durga Prasad*. 47 Cal. 95 (P C)=23 C. W. N. 914 : Also see *Hari Narayan* v. *Sriram Chakrabarty*, 37 I. A. 136=37 Cal. 723=14 C. W. N. 746 ; *Durga Prasad* v. *Brajanath*, 39 I. A. 133=39 Cal. 696=16 C. W. N. 482 ; *Abhiram* v. *Shyama Charan*, 36 I. A. 167=36 Cal. 1003=14 C. W. N. I.

Mines remain part of the soil and they belong to the person who is to have the ultimate interest in the soil and they cannot be worked by the life-tenant so as to take away that to which the remainder man is ultimately entitled. (*Campbell* v. *Wardlaw* 1883) 8 App. Cas. 641 referred to and followed). When lands are granted for life without any reservation of mines, the reversioner or remainder man has the general property and right of inheritance, in the sub-soil and in the mines and quarries, which it may contain, as part of his right in respect of the entire *solum* from the surface down to the centre of the earth, but the tenant for life has the right of possession or temporary enjoyment, as part of his right in respect of the entire *solum* in like manner. Although the life-tenant of the maintenance villages is not entitled to work and appropriate the minerals, the grantor or his lessee is not entitled to work and appropriate them during the continuance of the life estate, in the absence of proof that there was any reservation of a right to the minerals in favour of the grantor when the life-estate was created. *Prince Mahomed Buktyar Shah* v. *Rani Dhojamoni*, 2 C. L. J. 20.

Upon a construction of the Jungleburi lease of 1824. and of a subsequent confirmatory grant, *held* that they related to the surface merely, the mineral rights remained with the owner. A maintenance grant is *prima facie* one for the life of the grantee, and cannot be presumed to be more than a grant of rents and profits or to carry with it a right to open mines and remove minerals which are a portion of the soil. *Titaram Mukerji* v. *Cohen*, 33 Cal. 203 : 2 C. L. J. 408 : 9 C. W. N. 1073 P. C. (1 C. L. J. 517 affirmed).

A permanent lease including "all rights of various kinds" with the exception only of the homestead, includes the minerals. *Shyama Charan Nundi* v. *Abhiram Goswami*, 33 Cal. 511 ; 10 C. W. N. 738 : 3 C. L. J. 306.

The grant of a *mokrari* lease of a whole *mouza*, "*Mai kab hakuk*" (with all rights) constitutes a contract giving permanently to the lessee all the lessor's rights in the lands leased, including the right to work minerals, *Megh Lal Pandey* v. *Rajkumar Thakur*, 34 Cal. 358 : 5 C. L. J. 208 ; II C. W. N. 527. (33 Cal. 54 and 511 referred to. 7 Bom. 109 ; 2 C. L. J. 20 ; 33 Cal. 203 and 9 C. W. N. 255 distinguished).

A *digwar* in the district of Manbhoom is a permanent tenure holder, and possesses all underground and mineral rights. *Brojonath Bose* v. *Durga Prosad Singh*, 34 Cal. 753 : 5 C. L. J. 583.

Mineral and sub-soil rights.—A permanent lease including "all rights of various kinds" with the exception of the homestead, includes the minerals. *Shyama Charan* v. *Abhiram Gossami*, 33 Cal. 511 : 3 C. L. J. 306 : 10 C. W. N. 738. The lessor of the surface land, in excepting the coals and other minerals, impliedly reserves to himself, as a necessary incident, the right to dig for and win the coal. The reservation or grant of minerals rights, apart from the surface rights, must be taken to carry, as incident to it, the power not only to go upon the land and work the minerals known to be under ground, but to go on the land and conduct the ordinary preliminary operations by boring or otherwise, to ascertain (when it is not known) if there are minerals underground. The holder of the mineral right is entitled to the reasonable use of such portion or portions of the surface lands as he may require in the lawful and reasonable exercise of such rights. *Ramessur Mal a* v. *Ram Nath Bhuttacharjee*, 33 Cal. 462 : 3 C. L. J. 103 : 10 C. W. N. 17 : (1 C. L. J. 526 followed.)

The holder of a permanent tenure, possesses all the underground rights including mining rights, unless there is an express reservation to the contrary. The holder of a permanent tenure, with heritable and transferable rights, possesses all kinds of rights attaching to the land from the centre of the earth to the sky unless there is an express reservation restraining the enjoyment of any specified rights. *Sriram Chakerburty* v. *Kumar Hari Narain Singha*, 33 Cal. 54 : 3 C. L. J. 59 : 10 C. W. N. 425.

A reservation of minerals does not necessarily include every substance which can be got from underneath the surface of the earth for the purpose of profit. The words 'mines' and 'minerals' in any particular grant must be given the meaning which, judged from the whole of the deed, the parties may be taken to have intended (1888 *Lord Provost and Magistrates of Glasgow* v. *Faris*, 13 App. Cas, 657 and 1892 *Hext* v. *Gill*, L. R. 7 Ch. App. 699 referred to). When a grantor of land has reserved to himself the right to underground coal and lime stone, he is entitled egress and ingress for the purpose of reasonably working the mine, but he is bound to do no

more damage to the surface than is absolutely necessary, to protect the grantee's right of support and to compensate him for any injury to the surface of the soil. *Gandoo Mahata Nilmonee Singh Deo*, I C. L. J. 526. Followed in 3 C. L. J. 10 : 33 Cal. 462 : 10 C. W. N. 17.

Right of life-tenant to open and work mines. It is inconsistent with the ordinary conception of grant for maintenance, whether limited to the life of the grantor or to that of the grantee, that it should confer, either on the grantee or on his transferee, the right to open new mines within the grant and raise and appropriate to his own use the product of them. *Tituram Mukherjee* v. *Elias E Cohen*, I C. L. J, 517 Affirmed in 33 Cal. 203 P. C. : 9 C. W. N. 1073 P. C. : 2 C. L. J. 408 P. C.

Mines remain part of the soil and they belong to the person who is to have the ultimate interest in the soil and they cannot be worked by the life tenant so as to take away that which the remainder man is ultimately entitled. *Campbell* v. *Wardlaw* (1883) 8 App. Cas : 641 followed. A *Kharposhdar* as life-tenant has no right to remove by himself or by his lessee the minerals lying in the property which has been assigned to him as *kharposh* or maintenance. *Prince Mahomed Buktyar Shah* v. *Rani Dhoja Moni*, 2 C. L. J. 20.

A tenant for a term of years, has not, in the absence of express words, power to remove and sell the soil. Even if the words, 'quarries' or 'mines' are used in the lease, they would give him no right to work quarries or mines other than those open when he (tenant) came in which however he might work in the absence of such words. A life tenant or a tenant for a term of years cannot open new mines, but can work mines, which were open when he came in. *In re Purmanandas Jewandas*, 7 Bom. 109.

APPENDIX I.

Rules made by the Government of Bengal under section 55 of Act I of 1894.

NOTIFICATION—No 29 T. R.

The 24th April 1895.—In exercise of the powers conferred by section 55 of the Land Acquisition Act, I of 1894, and with the previous sanction of the Governor-General in Council, the Lieutenant-Governor is pleased to make the following rules in supersession of the rules issued under section 59 of Act X of 1870 and published under notification, dated the 4th November 1889, at pages 898—900, Part I of the *Calcutta Gazette* of 6th idem.

(Published in the Calcutta Gazette of 1st May 1895)

Rules under the Land Acquisition Act, I of 1894.

1. When any revenue-paying land is acquired under the Land Acquisition Act (I of 1894), the proprietor shall, except as provided in rule 6, be relieved of liability to pay revenue to the extent of the Government demand upon the said land, and such relief shall have effect from the date on which the Collector may take possession of the land on account of Government.

2. In such cases the Collector shall, before making an award, ascertain, in accordance with the two next following rules, and record the amount of Government revenue which is to be taken as payable in respect of the acquired portion, and shall, in the event of a reference being made to a Court, at the time of making the reference, with particulars of the amount of the share so ascertained and recorded.

3. If the land to be acquired be an entire estate or tenure assessed with a specific amount of revenue, the whole of such amount shall be remitted.

4. If the land be not liable for a specific amount of revenue, but be a portion of an estate or tenure which is liable for a specific amount, the proportion of Government revenue to be deemed payable in respect of the land taken shall be ascertained under the following rules :—

1st.—When an estate has, within twenty years next preceding the date of the commencement of proceedings for the acquisition of any land situate therein, been subjected to a detailed settlement, or has formed portion of an estate brought under partition under the Estate's Partition Act, VIII (B. C.) of 1876, made after inquiry into and record of the assets of the estate, the Government revenue to be deemed payable in respect of the said land shall bear to the assets of the said land the same proportion as the

Government revenue of the whole estate bears to the assets of the whole estate, as shown in the settlement or partition proceedings.

2nd.—When there has been no such settlement or partition as aforesaid, then, if the area of the estate is known with accuracy, the amount of Government revenue to be deemed payable in respect of the portion of the land taken shall bear to the Government revenue of the whole estate the same proportion as the area of the said portion bears to the area of the whole estate.

3rd.—When the Government revenue deemed payable in respect of the land taken cannot be determined by either of the above rules, one-fourth of the net rent (*i.e.*, the gross rental less a deduction of 10 per cent., for the expenses of collection) of the said land shall be taken to be the amount of Government revenue thereon chargeable.

NOTE—The proportion of Government revenue to be deemed payable in respect of the land taken should be calculated up to annas only, pies being avoided.—*Vide* Board's Revenue Circular No. 6 of July 1901.

5. In determining the amount of compensation to be awarded, the Collector shall take into consideration the fact that the land acquired is subject to the burden of the payment of Government revenue.

6. In the event of the proprietor declining to accept an abatement of revenue, such circumstance shall not entitle him to any compensation over and above the amount fixed for the award under section 23 of the Act on the original basis of calculation. In cases, however, in which the area of the portion of land acquired does not exceed one twentieth part of the area of the estate, it shall be competent to the Revenue authorities, if the proprietor of the estate so desire, to pay to the proprietor the computed value of the revenue deemed payable in respect of such portion on the condition of his continuing to pay the reveue of the entire estate without abatement: provided that, in computing the value of the revenue so assigned, the basis of calculation shall not exceed the number of years' purchase (if known) upon which the market-value of the proprietor's profits, *i.e.*, the amount of compensation to be awarded for the land, has been determined. Thus, if the market-value of the said profits has been computed at twelve years' purchase, the capitalized value of the revenue deemed payable in respect of the portion of land acquired shall be calculated at not more than twelve years' purchase of the amount of revenue in question.

7. When there is any question whether the land to be acquired is part of a revenue-paying estate, or is revenue-free, the Collector shall decide the matter before making his award, leaving it to the claimants to apply for a reference to the Court if they object to his decision. In case of a

reference being applied for, the Collector shall, if he has decided that the land is revenue-free, determine the amount of revenue which would be payable for it in the event of its being held to belong to the revenue-paying estate of which it is alleged to form a part.

8. To enable him to calculate accurately the additional compensation to be given under section 23 (2) of the Act, and to keep up fully and clearly his registers of all lands occupied and compensation paid for them, the Collector shall invariably record separetely his finding under the first head of section 23 (1) of the Act, which concerns the market-value of the land.

9. The procedure laid down as to the payment of the compensation-money in case of references under section 18 shall apply also to references under section 30 or section 35. The compensation money, or if any of the parties are willing to accept payment of the shares and payment to them is admissible, the portion of it which is in dispute and cannot be paid away shall be deposited in Court when the reference is made.

* 10. In giving notice of the award under section 12 (2), and tendering payment under section 31 (1), to such of the persons interested as were not present personally or by their representative when the award was made, the officer shall require them to appear personally or by representatives by a certain date, to receive payment of the compensation awarded to them, intimating also that no interest will be allowed to them if they fail to appear. If they do not appear, and do not apply for a reference to the Civil Court under section 18, the officer shall, after any further endeavour to secure their attendance that many seem desirable, cause the amounts due to be paid into Treasury as revenue deposits payable to the persons to whom they are respectively due, and vouched for in the accompanying form (marked E). The officer shall also give notice to the payees of such deposits, specifying the Treasury in which the deposits have been made. When the payees ultimately claim payment of sums placed on deposit, the amounts will be paid to them in the same manner as ordinary revenue deposits. The officer should, as far as possible, arrange to make the payments due in or near the village to which the payees belong, in order that the number of undisbursed sums to be placed in deposit on account of non-attendance may be reduced to a minimum. Whenever payment is claimed through a representative, whether before or after deposit of the amount awarded, such representative must show legal authority for receiving the compensation on behalf of his principal.

* *Vide* Government Notification No. 4876 L R., dated 30th November 1896, published in the *Calcutta Gazette* of the 2nd December 1896, Part I pages 1204-1205.

E.

NAME OF WORK FOR WHICH LAND HAS BEEN AQUIRED__________

*To the Officer in charge of*__________ *Treasury.*

Please receive for transfer to credit of Revenue Deposits the sum of Rs.__________on account of compensation for land taken up for the above purpose, payable as detailed below :—

Serial No. in award statement No.	Names of persons to whom due.	Area of land.	Amount payable to each.	REMARKS.
		Acres	Rs. A. P.	
	Total ...			

Date *192* . *Land Acquisition Officer.*

Received the above amount and credited to Revenue Deposits.

Treasury Officer.

NOTE.—This form should be used when the amount of compensation due are sent to Treasury in the absence of proprietors who have failed to present themselves for payment.

E.

NAME OF WORK FOR WHICH LAND HAS BEEN ACQUIRED__________

*To the Officer in charge of*__________ *Treasury.*

Please receive for transfer to credit of Revenue Deposits the sum of Rs.__________on account of compensation for land taken up for the above purpose, payable as detailed below :—

Serial No in award statement No.	Names of persons to whom due.	Area of land.	Amount payable to each.	REMARKS.
		Acres	Rs. A. P.	
	Total ...			

Date *192* . *Land Acquisition Officer.*

Received the above amount and credit to Revenue Deposits.

Treasury Officer

NOTE.—This form should be used when the amounts of compensation due are sent to Treasury in the absence of proprietors who have failed to present themselves for payment.

Extract from the Rules framed by the Government of the United Provinces.

Rules for guidance in awarding compensation for lands required under Act I of 1894.

1 *Houses.*—The rental of houses shall be calculated, when possible, on the actuals of the three years preceding compensation : and the market-value shall ordinarily be *eight* times the average of such rental. Where no guide to the rental exists, the calculation shall be based upon an estimate of the cost of material and rebuilding, the former being deducted if made over to the proprietor. For the land occupied by the building compensation shall be given under Rule 13.

2. *Wells and tanks not used for agricultural purposes,*—The cost of reconstruction shall ordinarily be tendered as compensation under section 11 of the Act, provided :—

(1) that if the well or tank has fallen into disuse, compensation shall be allowed on the present value of the material only ;

(2) that if the well or tank is in bad repair, deduction shall be made on this account.

3. *Wells or tanks used for agricultural purposes*—The cost of constructing a similar new well or tank shall, with the same provisos as in rule 2, be tendered as compensation ; but—

(1) if the construction of a new well or tank diminishes the culturable area of any part of a cultivator's holding, compensation shall (if no compensation has been awarded under these rules for the lands occupied by the old well or tank) be tendered for such lands under the rules for awarding compensation to landlords and tenants for land ;

(2) if the irrigated area of the holding is likely to be lessened in way, compensation shall be tendered to the landlord by reducing his revenue by the difference between an irrigated and unirregated revenue-rate on the land, and to the cultivator under Rule 14.

4. *Trees.*—The market-value of timber, and eight times the annual value of fruit in the case of fruit trees shall be tendered in compensation : provided that the owners may be given the option of cutting down trees without compensation for timber.

5. If any tenant possesses by local custom any right in the timber or produce of any tree, the award shall be apportioned according to the custom regulating the distribution of profits or the price of the timber.

6. *Crops.*—In the case of ripe crops the owners shall be required to

cut and remove them, and no compensation will be necessary. If it is necessary to cut an unripe crop, its value will be calculated at the estimated value of similar ripe crops in similar neighbouring land.

7. *Landholder's interests,—A Cultivated land,*—(1) The recorded rental of the jamabandi shall be ascertained for that portion of the appropriated area which is occupied by tenants; and if the land-owner object that the recorded rent is less than rent actually paid, such objection shall not be heard.

(2) The annual value of that portion of the area appropriated which, from being *Sir* or other cause, is cultivated by the proprietor shall be calculated at the recorded rent for similar neighbouring lands with similar advantages paid by tenants-at-will. If *Sir* land is cultivated by sub-tenants, compensation shall be based on the rents recorded for such land.

(3) In the case of lands for which rents are paid in kind, if no money rates for similar neighbouring lands with similar advantages exist; the annual value shall be estimated at the mean market-value of the landlord's share of the average recorded out-turn during the past three years.

8. *Culturable land.*—(1) The rental of "cultivable land recently thrown out of cultivation" (meaning by that term land lying out of cultivation for a term less than three years) shall be estimated at not less than one-third and not more than two-thirds of rent of dry cultivated land of similar capacity, according as such land is ordinarily left waste for a longer or shorter term.

(2) The profits of cultivable land yielding assets (as from *dhak* jungle, grass, etc.,) or the piscary from tanks, shall be estimated at the average receipts of three years.

9. The revenue borne by the appropriated area, if not ascertainable from the record-of-rights shall be calculated on the basis of the assessment rates on the different classes of soil contained in the area; that on *gauhan* land, for instance, being calculated at *gauhan* rates, that on *bhur* land at *bhur* rates. If no separate rates were assessed or classes of soils, the rate of the whole revenue on the total cultivated area of the *mahal* or *patti* may be taken allowance in all cases being made according as the land taken up is above or below the average, and care being taken to exclude from the calculation any part of the revenue which is due to sayar assets or waste land.

The difference between the revenue, *plus* local and patwari's rates and 12 per cent. cesses and the rental thus calculated, is the landlord's net profits.

10. The profits of land exempt from Government revenue, if in such land the proprietary and grantee right be distinct, and if settlement has been made between the proprietor and grantee, shall be calculated in the mode prescribed under Rule 7 for the calculation of land paying revenue to

Government. If the proprietor and grantee are the same, and in all cases in permanently settled districts, the declared rental of the lands recorded in such mahals, checked by the recorded rents of similar land held by the same class of tenants in adjacent villages, after deduction of cesses, and in mahals paying revenue, in the permanently settled districts after deduction of cesses and revenue, shall form the basis of calculation.

11. The number of year's purchase of the profits to be allowed in the case of land assessed to land-revenue or of which the land-revenue has been assigned, or redeemed, must be determined by the Collector on a consideration of the market-value and local custom as to sale of such land; but in the case of lands paying revenue to Government not more than 16 years' purchase, and in the cases of lands of which the land-revenue has been assigned or redeemed not more than 25 years' purchase, shall be paid without a reference to the Commissioner under Rule 17. The provisions of this rule together with those of Rule 9, clause 2, are applicable to land subject to malikana appropriated for railway purposes.

In the case of land held under a perpetual lease at a quit rent, the division of the compensation assessed by the Collector between the proprietor and the lessee shall *ordinarily* be made in the ratio of the profits they respectively derive from the land in question. But where, for any special reason, their respective interests in the land cannot equitably be estimated in this ratio, the division shall be made in such manner as may appear to the Collector to be just and reasonable. Where a lease of revenue-paying land purports to be in perpetuity, regard must be had to the extent to which the lessee's interest may be affected by the provisions of section 29 of the North-Western Provinces Rent Act, 1881.

12. In the case of cultivable land lying waste beyond the term of three years, or yielding no assets, or having no appreciable value owing to proximity to a town or village or otherwise, and not taken into calculation under the above rules, a price may be offered, not exceeding two rupees per acre. In the case of fruit and other grove lands, compensation should offered not exceeding Rs. 2 per acre *plus* the market value of the timber, and in the case of fruit trees eight times the annual value of the fruit. under Rule 4 above.

13. In the case of barren land yielding no assets, or having no appreciable value from proximity to a town or village or otherwise, a nominal price shall be offered, not exceeding one rupee per acre. In the case of such land, or of land under Rule 12, situate within, or in the vicinity of a town or village, compensation shall be based, if ascertainable, on the market-value of similar land. Should no selling price be ascertainable, compensation shall be estimated at eight times the annual value of any fees customarily paid to the proprietors by occupants of persons for

the use and occupation of the land on which such houses are erected. In the absence of sales or fees from such land, a nominal price shall be paid, not exceeding one rupee per 100 square yards.

14. *Interests of tenants.*—The compensation tendered to tenants with rights of occupancy, or in the case of *sir* lands in consideration of the cultivating rights of a proprietor, shall not be less than three years' purchase, nor without a reference to the Commissioner, more than six of rental determined under Rule 7 *(1)* as the basis of compensation. In proportion as the rent, approches to a rack-rent, the number of years' purchase tendered in compensation shall be diminished. In the case of ex-proprietary tenants, 20 per cent. shall be added to the rental on which the compensation to tenants with rights of occupancy holding similar land is calculated.

A larger number of years' purchase should be awarded in cases where the tenant's position is much injured by the absence of other available land in the vicinity than in cases where other land is easily obtainable. To tenants-at-will, besides the compensation prescribed under Rule 6, one year's rent shall be awarded.

15. The compensation allowed to tenants at fixed rates in the permanently-settled districts shall be calculated at the market rate of such rights *plus* 15 per cent. thereon authorised by section 23 *(2)*, provided that no more than twelve years' purchase shall be paid without previous reference to the Commissioner.

16. The officer determining the amount of compensation awarded shall record clearly in every case for which no fixed rate of compensation is awarded the grounds on which his award is based.

17. Cases for which rules here laid down do not provide or in which the compensation provided appears, for and special reasons, inadequate or excessive, shall be forwarded for orders to the Commissioner of the Division who if he agrees with the Collector in recommending a departure from the rules, shall refer the case for instructions to the Board of Revenue.

18. Nothing in these rules shall be construed to override any of the provisions of section 23 of Act I of 1894.

19. Care should be taken in every instance of permanent appropriation to add 15 per cent. to the ascertained market value of the land under section 23 *(2)* Arrangements should also be made for the payment of interest from the date of occupation to the date of payment of compensation, or to the date fixed for payment of compensation, whether the occupation is permanent or temporary.

The rules framed by the Government of Bombay under the Land Acquisition Act I of 1894.

GOVERNMENT RESOLUTION

No. 6188, DATED 25TH JULY 1894.

The Land Acquisition Act, X of 1870, having been repealed by Act I or 1894, which came into force from 1st March 1894, His Excellency the Governor in Council desires to invite the attention of officers who may be concerned in the acquisition of land for public purposes to the necessity for care in conforming their procedure to the terms and requirements of the new Act, more particularly in regard to the points noted below :—

(1) Claims to easements on, as well as to interests in, the property to be acquired must now be considered.

Section 3, clause (*b*).

(2) Land may now be taken up when required for village sites subject to the condition that it is the custom of the district for Government to provide land for the purpose. Proposals to take up land under this provision should be accompanied by a report showing that the condition is fulfilled with a view to the issue of the necessary notification.

Section 3, clause (*f*).

(3) Claims to represent minors and other persons unable to act for themselves must now be scrutinised with reference to the proviso to the definition of "Persons entitled to act."

Section 3, clause (*g*).

(4) In this section the words "or other Chief Revenue Officer of the district" have been added to indicate that disputes as to damages on entry are to be decided by the Collector of the district, not by any officer specially appointed to perform the functions of the Collector under the Act

Section 5.

(5) The addition of the words "wholly or partly" before the words "out of public revenues," makes it permissible to apply the act to the acquisition of land for suitable objects at the joint cost of public revenues or the funds of local authorities and of private benefactors, as well as when the whole cost is to be defrayed from public revenues or the funds of local authorities.

Section 6 (proviso).

(6) The correctness of the measurements made under section 8, and the apportionment of the compensation among the persons interested, are now added to the matters to be dealt with in the Collector's award. His enquiry is no longer to be summary, and authority is given to require statements of claims to be made in writing. Except as is noted further on his award is now made final, and immediate notice of it must be given to any claimant not present when it is made. Having regard to the greater formality of

Section 9, clause (2), and Section 10 to 15.

the enquiry and the possible finality of the award, it will probably be found advisable to require statements of claims to be made in or reduced to writing in all cases in future.

(7) Certain conditions are laid down which must be carefully attended to when services of notices by post may be necessary.

Section 9, clause (4), and section 45.

(8) Not less than 15 days' notice must now be allowed when any person is called upon to furnish a statement of other persons interested in the land to be acquired.

Section 10.

(9) Provision is made for immediate appropriation of land acquired for Railway purposes in certain emergencies, without waiting for the expiration of 15 days from publication of the notice mentioned in section 9 sub-section (1), subject, however, to reasonable notice to occupants of buildings who may be required to vacate, and compensation must be offered in all cases in which possession is taken in anticipation of the award, for damages arising from sudden dispossession and not excluded by section 24, as well as for standing crops and trees.

Section 17, clause 2.

(10) No reference to the Civil Court need now be made except on written application, made within the time laid down, from a person who has not accepted the award, failing which the award becomes final. It is, however, open to the Collector to refer disputes as to apportionment to the Court for settlement.

Section 18 and 30.

(11) When a reference is made, care must be taken to comply with the provisions of section 19, as to the information to be supplied, among which attention may be drawn to those mentioned in clause (2) as to particulars of all notices served upon and statements in writing made or delivered by the parties.

Section 19.

(12) The phrase "market-value" remains undefined but may be taken to mean the price which the owner might be expected to obtain for his property with full opportunities of time and occasion, such as might be held to be reasonable under all the circumstances of the case. The new Act differs from the old in that it requires the compensation to be fixed with reference to the market-value of the land, at the date of the declaration, instead of at the date of the award, and consequently the consideration of a new item, to wit, (sixthly) the damage (if any) *bana fide* arising from any diminution in the profits of occupation during the period between the declaration and the Collector's entry into possession. Item "secondly" under section 23 must apparently be read subject to the condition that compensation for standing crops and trees has not already been paid separately under section 17 (3).

Sections 15, 23 and 24.

(12) In item (seventhly) a provision excluding from consideration any outlay on, or improvement or disposal of, the land *without the sanction of the Collector* after publication of the declaration under section 6, is substituted for the somewhat vague provision in the former Act excluding outlay or improvements commenced or effected with the intention of enhancing the compensation.

Section 24.

(14) The Court has now a discretion in awarding costs which may be used as a check on extravagant or speculative claims or negligence in making or stating them. On the other hand the effect of section 28 must be borne in mind. By making unduly low awards, the Collector may now render himself liable to pay interest on any excess amount awarded by the Court, as well as the costs of the reference.

Sections 27 and 28.

(15) To save accrual of claims for interest the amount of the Collector's award must now be deposited in Court when for any reason there is no person able and willing to receive it ; and provision is made for receipt by any person interested of the sum awarded, without prejudice, if it be received under protest as to its amount, to the right of the recipient to demand a reference or to the right of other persons interested to recover from him, and for investment of the amount in certain cases when it has been deposited in Court. A discretionary power subject to the sanction of Government, of settling otherwise than by a money payment with persons having a limited interest in the land even when it is taken up under the Act, is also reserved.

Sections 31, 32 and 38.

(16) The new Act makes it clear that land taken up for Railway Companies, for which under contract with the Secretary of State, Government is expressly bound to provide land, is to be treated as taken up on behalf of Government, and not under the provisions relating to the acquisition of land for Companies.

Sections 43 and 44.

(17) The taking of possession is now the stage of the proceedings up to which it remains open to Government to withdraw from the acquisition instead of the making of an award or reference as under the old Act.

Section 48.

(18) In cases of severance, it is now open to the owner of any building, etc., who may have expressed a desire that the whole should be taken up, to withdraw or modify his demand at any time before an award has been made, and to Government to acquire the whole, in cases in which extravagant claims to compensation for severance are set up.

Section 48.

(19) Local authorities or Companies at whose cost any land may be taken up under the Act are now entitled to be heard and to adduce evidence for the purpose of determining the amount of compensation, but cannot demand a reference.

Section 50.

Notes—"It is necessary also to bear in mind that the rules and instructions under the Land Acquisition Act of 1870 printed in the compilation of rules in force in the Revenue Department have not and never had the force of law and are not therefore saved by section 2, clause (2). They may still be used as a general guide, but care must be taken to follow them no further than may be strictly consistent with the provisions of the new Act, and instructions should be applied for in regard to any new questions that may arise." *See Bombay Government Resolution No. 6188 dated 25th July 1891.*

The Rules framed by the Government of Bombay under section 59 of the Land Acquisition Act X of 1870, published in the Bombay Gazette of 13th March 1873;—

1. Whenever it shall appear to the Collector desirable that the Government revenue or haks of any kind shall be remitted in payment or part-payment of the compensation to be awarded for land taken under this Act, he shall estimate the value of such revenue or haks, and deduct it from the estimated compensation to be awarded to the owner of the land.

2. If the land has been surveyed and assessed to the land revenue under the provisions of Act I of 1865, or when it bears an assessment according to existing practice, the value of Government claims on such land shall be calculated at not less than twenty-five times the survey assessment: but houses, trees, crops, wells, and improvements shall be estimated separately on the best information available to the Collector.

3. When the land to be taken under this Act has not been so surveyed and assessed under Act I of 1865, or does not bear an assessment according to existing practice, the Collector shall proceed to assess it on the best information he can procure, and the value of the Government claims on such lands shall be calculated at not less than twenty-five times the assessment fixed by the Collector, with the approval of Revenue Commissioner.

4. When making an award of compensation to be given under section 42 of Act X of 1870, the Collector or Court shall record separately the compensation to be granted under the first clause of section 24 of the Act, which concerns the market value of the land and the portion of compensation to be granted under the 2nd, and 4th clauses of that section.

5. The procedure required for a reference under section 15 shall be applicable to a reference under section 43.

6. When the amount of compensation to be awarded under section 43 (for temporary occupation of land) has been fixed, and there is a dispute as to the division of the amount among the persons interested, tho Collector shall refer such dispute to the Court for decision, and the procedure prescribed by section 39 shall be applicable to such reference.

7. Any informality in the proceedings of the Collector or Court under this Act shall not vitiate the award, unless the the interests of any party or parties are injuriously affected thereby.

Extracts from the Rules made by the Government of the Central Provinces under Act I of 1894.

Enquiry into value and claims, and award by Collector.

27. The Collector may, in the course of his enquiry, call for reports from subordinate officers, or obtain the opinions of experts. But the final estimate of value must in every case made by the Collector himself.

28. The matters to be considered in determining compensation will be found in sections 23, 24, and 49 of the Act. In every case the Collector is bound to use his best efforts for the protection of the interests of Government, while he gives due consideration to the claims of private individuals.

29. *Rules for the Calculation of Compensation.*

I.—AGRICULTURAL LAND.

30. After such check on the spot and enquiry into the general value of land under para. 26. as may be found necessary, the Collector will have prepared an English Abstract of the Jamabandi in Form L and will prepare a list of property other than agricultural land in Form P, and will frame a statement in Form M of the multiples which he proposes to adopt for each village.

The considerations on which the multiple should be determined cannot be laid down by rule, but the following may be accepted as a guide :—

(*a*) The demand for land in the village as illustrated by the existence or absence of high ordinary rents or sub-rents as compared with the reduced rental valuation.

(*b*) The actual market value of land transferred by private sale but care should be taken that the price paid has not been obscured by encumbrances or debt transactions.

(*c*) The proximity of market towns.

(*d*) In poor villages, where the land acquired consists of a substantial portion of the best land, a higher multiple should be adopted.

Subject to considerations of this kind the ordinary multiple should range between 15 and 25. It should never be lower than 10.

The Collector will report his proposals to the Deputy Commissioner for the orders of the Commissioner, who will have power to sanction with or without modification the rates unless it is proposed to adopt a higher multiple than 30, in which case the Chief Commissioner's sanction must be obtained.

31. While the action referred to in para. 30 is being taken, the Collector will have a schedule of rates extracted from the Roytwari abstract fly-sheet, showing the rate per acre deduced by the Settlement Officer for each kind of soil to be found in the area to be acquired and this schedule will be signed by him as correct and attached to his proceedings.

32. For the purpose of valuation, new fallow will be treated as cropped land of the same soil and position. Old fallow if culturable should be valued at a special rate, which should in no case exceed the rate of similar land under cultivation unless it has a special value as grass land. Unculturable waste included in a holding and village waste not included in a holding, should be valued at a nominal rate which should be fixed in each case and should ordinarily approximate to 2 annas per acre, unless on account of its position it has a value as non-agricultural land, in which case it will be treated under para. 36 below.

33. The appropriate rates will then be entered against each soil entry in the English Abstract Form L, and the rental value will be calculated and totalled for each holding, fractions of annas being raised to one anna. The compensation will then be calculated by applying the multiple sanctioned under para. 30.

34. If the application of the sanctioned multiple to the rental valuation does not bring out a fair compensation for any particular plot of land which is specially valuable on account of exceptional irrigation advantages, embankments situation in the *geonra khari* area or for some other reason (such special value not having been fully allowed for in the rental valuation), the Collector may raise the compensation to a reasonable figure, entering this amount in a second line in column 11, under the amount calculated according to rule. The reasons for giving a higher compensation must be stated in the 'Remarks' column. If interest has to be paid, its amount should be shown in the appropriate column 13 to 15 by a second line of figures.

The multiple will in all cases be fixed on the assumption that the land is held at an average land revenue assessment, but if the land is held revenue-free or at a low quit-revenue or at an exceptionally light assessment, which increases its value to the landlord, the share of the compensation payable to the landlord may be raised by an addition not exceeding 50 per cent. The percentage by which it is proposed, under such circumstances, to increase the share of the landlord shall be reported for the sanction of the Commissioner in the 'Remarks' column of Form M.

II.—Non-agricultural Land.

35. By this is meant not waste or unculturable land in villages which is not in occupation, but land having a value for non-agricultural purposes

such as ground suitable for building sites situated in or near towns and so forth. For such land no rules can be framed; its market-value or the market-value of similar land in the vicinity must be ascertained. Evidence bearing on this will generally be forthcoming, but failing such evidence, the nazul rules (Revenue Book Circular) can be usefully consulted, the value of the land varying according as it has or has not been paying ground-rent or land revenue. Entries regarding land of this kind as well as regarding agricultural property other than land should be recorded in Form P and filed with the proceedings.

III.—PROPERTY OTHER THAN LAND.

36. If any house, building or tree standing on the land to be acquired by the Government, the owner may be allowed the option of removing it within a reasonable period, to be fixed by the Collector, in which case the value of such material as determined in the award, will be deducted from the sum payable as compensation, or if compensation has been already paid will be recovered from the owner prior to the removal of the materials.

37. Compensation should be calculated on the present value of the materials *plus* cost of construction at present rates, less the value of any materials made over to the proprietor provided that, if the buildings have fallen into disuse, compensation should be allowed on the present value of the materials only. Separate compensation will be given for the land.

38. The market-value of timber, and eight times the annual value of fruit in the case of fruit trees, should be tendered in compensation; provided that the owner may be given the option of cutting down trees without compensation for timber.

If any tenant possesses, by local custom, any right in the timber or produce of any tree, the award should be apportioned according to the custom regulating the distribution of profits or the profits of the timber.

39. In the case of ripe crops the owner should be requested to cut and remove them, and no compensation should be necessary. If it is necessary to cut an unripe crop, its value should be calculated at the estimated value of similar ripe crops in similar neighbouring land.

IV.—COMPENSATION FOR INDIRECT DAMAGE.

40. If any damage is sustained by any person by reason of the acquisition injuriously affecting other property, movable or immovable, compensation should be given for this damage. For instance, if the rental value of any land other than that acquired be lessened, in

consequence of the taking up of a tank or well or by the cutting of an embankment, compensation should be given in the manner laid down in Part I of these rules upon the annual reduction in rental value of such land.

Reduction of rent and remission of revenue.

41. When the entire holding of a tenant is acquired, the rent paid by him for that holding will of course be remitted, but when a portion of the holding only is acquired, the amount by which his rent is to be reduced will ordinarily be the amount of rental valuation calculated to the nearest 4 annas upon which compensation has been calculated. When, however, the reduction of his rent by this amount would leave the balance of rent payable on the balance of his holding disproportionately high or disproportionately low, the amount to be reduced may be fixed either reference to the proportion which the reduced rent of his holding at settlement bore to the rent actually paid, or otherwise, as the Collector, after hearing the landlord and tenant, may think fit.

42. As the reduction of these rents in consequence of loss of area constitutes a separate proceeding under the Tenancy Act, from which an appeal lies, the proceeding in connection with the reduction should form a separate case which may be kept with the acquisition proceedings only so long as they are not disposed of. The rent reduction proceedings must contain a statement in Form N, showing the deduced valuation and the amount by which the rent is reduced in each case with the total rent reduction made. From this total will be reducted the rental valuation of the numbers contained in Form K, namely, land unoccupied and hence unassessed at settlement. The balance will be the reduction in assessed assets which the acquisition of the land has entailed on the proprietor. The proportionate revenue calculated at the fraction assessed at settlement to the nearest 4 annas will be the revenue to be remitted. Any malik-makbuza revenue reduced in the course of acquisition will of course be taken off the mahal revenue without deduction, and in the case of muafi holdings only the kamil-jama will be reduced. Cesses will be similarly reduced, the calculation being to the nearest anna.

Only in very exceptional cases and when a large block of waste land is acquired it will be necessary to reduce revenue on account of loss of siwai income.

The revenue remission necessary for each separate acquisition case will be reported in form O, and this statement contains the only report of the compensation given that need be made for the information of the Local Administration.

43. On receipt of sanction to the remission proposals, the necessary changes will be made in the standard kistbandi (*vide* paragraph 11, Revenue Book Circular I-1).

44. If the village is held in dual proprietorship, the malikana payable by the inferior to the superior proprietor should be reduced in the same proportion as the land revenue.

II.—Distribution of total Compensation among persons interested.

45. The claims of persons asserting a right to a share in the integral sum awarded as compensation should be very carefully dealt with. It often happens that besides the proprietor of the land there are other persons interested, *viz.*, inferior proprietors, thekedars with or without a protected status under section 65-A of the Land Revenue Act, assignees of Government revenue, mortgagees, etc. Besides the above there are tenant of different classes. The claims of all such interested parties must be carefully examined, and the amount of compensation due to each determined. The Chief Commissioner does not consider it desirable or possible to lay down a scale of distribution which shall cover all cases, but the following guides will be found useful.

As between landlord and tenant the following scale indicates the manner in which the compensation for land should ordinarily be divided :—

Tenure.	To the Landlord.	To the Tenant.
Sir or khudkhast	The whole ...	...
Malik-makbuza	The whole ...	...
Absolute occupancy tenants ...	$\frac{1}{3}$	$\frac{2}{3}$
Occupancy tenants	$\frac{1}{2}$	$\frac{1}{2}$
Ordinary tenants	$\frac{3}{5}$	$\frac{2}{5}$
Village service tenants ...	The whole ...	...

These ratios have borne the test of experience and should only be altered in exceptional cases. In the case of a village service tenant, it must be remembered that the rent-free holding is given to the encumbent as his remuneration during his tenure of office, and that if it be taken away the landlord can be required to give him other land or pay him remuneration in cash.

As regards cases in which several parties are interested in the share

of compensation due to the landlord, a division must be made upon the merits of each person's claim. If the village is held by superior and inferior proprietors, the superior proprietor might be given a share of the landlord's compensation equal to the capitalised value of the loss of his proprietary profits. In the simplest case where the superior proprietor's profits consist solely of a malikana payment, his share of the compensation might be the capitalised value of the amount by which the malikana is reduced, the inferior proprietor receiving the balance. In capitalising the loss of profits, a multiple of 16 should ordinarily be used. A similar principle might be followed in dividing the landlord's share between a proprietor and a protected thekedar. When the village is held by an ordinary thekedar, the number of years for which the lease has still to run must be taken into consideration. When the land is encumbered, the portion of the landlord's or tenant's share of the compensation to be given to the mortgagee or other person calls for special adjudication, and the decision should be noted in the column for remarks.

In ryotwari villages the compensation due to a Government ryot shall be that which he would receive if he were an occupancy tenant. In such villages Government is the landlord, so that the patel is not ordinarily entitled to any share of the compensation due to the landlord, but in special cases, such as those where the village is held by a watandari patel or where a high rate of commission is given for special reasons and not solely remuneration for collection or where a considerable proportion of a village is acquired, some compensation may be given for the loss of his pateli rights over the land acquired. He will receive the tenant's share of the compensation for any land acquired which he holds as a Government ryot.

I.—Temporary Acquisition.

46. If the land is aquired temporarily, the multiple shall ordinarily be two a half times the number of years for which the land is taken up. If the land is held by a tenant, the landlords share shall be the amount of the actual rent of the land acquired (or the rental valuation, if the actual rent is not ascertainable) multiplied by the number of the years for which the land is taken up, the balance of the total compensation going to the tenant. No abatement of land revenue will be granted, and as the payment made by Government to the landlord represents the rent payable by the tenant, the landlord will not be entitled to demand rent again for that land until the temporary occupation ceases.

I.—Payment of Compensation.

47. After disposing of the case, the Collector will draw up an award to be forwarded to the Comptroller, or Examiner, Public Works Department,

as the case may be, in the forms prescribed by the Government of India's Resolution No. 2209-A, dated the 10th May 1895.

48. On the completion of his award under para. 50, the Collector shall tender payment of the compensation to such of the persons concerned as may be present, and shall issue notices to those who are absent, to appear within one week from receipt of the notice, to accept payment.

49. When tendering payment, the Collector shall explain to the parties the procedure which will be followed in the event of their refusal to accept the award, and such provisions of sections 23 and 24 of the Act as may have been brought into use in calculating the compensation offered.

50. If the Collector be unable to pay the compensation for any reason, or if there be any dispute about the apportionment thereof, the Collector will deposit the amount in Court under the provisions of sections 31 to 33 of the Act, in accordance with the instructions, *vide* Government of India's Resolution mentioned above.

51. In the case of land which is being acquired on behalf of a Company or municipality and which is not provided by Government free of charge (see section 50 of the Act), the Company or Municipality, as the case may be, must be immediately informed by the Collector of the compensation awarded, and the necessity for prompt payment must be pointed out.

K.—Taking possession of the land.

52. No officer shall take possession of the land acquired without the permission of the Deputy Commissioner of the district. Ordinarily, though under section 16 of the Act possession may be taken as soon as an award is framed, the Collector will take no action untill the compensation has been paid or the amount deposited in Court, as interest has to be paid under section 34 of the Act from the date of taking possession to the date of payment.

53. Under section 17 of the Act, the Chief Commissioner has power to sanction possession being taken before the award is made. In such case the Collector must, at the time of taking possession offer compensation for the standing crops and trees (if any) and for any other damage caused by such sudden dispossession. In case the offer is refused, the amount due on these accounts will be determined at the time of fixing the value of the land.

L.—Reference to the Court.

54. Under section 18 of the Act any person who has not accepted the

award may require the Collector to make a reference to the Court with a view to decide :—

(1) the correct measurement of the land ;
(2) the amount of compensation payable ;
(3) the persons to whom it is payable and
(4) the apportionment of the compensation among the persons interested.

Such reference will be made only at the instance of a person interested ; otherwise the Collector's award is final.

In the first two cases the Collector will be a party to the suit, and will conduct it on behalf of Government. He will be responsible for laying before the Judge all the evidence required to enable him to arrive at a just decision.

55. When the land is to be acquired for the Public Works Department or for large projects such as those referred to in para. 7 above and it seems that the awards are likely to exceed the aggregate estimate for the district by 25 per cent. or more, a report should be submitted through the Deputy Commissioner to the Commissioner, and if the excess involved exceeds a lakh of rupees, to the Local Government, further action being suspended till the receipt of orders. In the *interim* the officer who framed the original estimate should be called upon to explain if the rates are found to have been obviously under-estimated.

56. When land is available which may be given in lieu of the land under acquisition, an option of receiving it in exchange for the whole or any portion of the land of which he is being expropriated may be allowed to the owner, on his consenting to allow a sum corresponding to its value to be deducted from the compensation awarded to him.

Extacts from the Rules framed by the Government of the Punjab under Act I of 1894.

THE AWARD.

32. The award must in all cases be made by the acquiring officer himself and recorded with his own hand. On the date fixed in the notice issued under section 9 he will then prepare two lists, of persons present, and of the absentees. Unless it appears to him that there is sufficient reason for adjourning proceedings to a later date, the case will be conducted *exparte* so far as absentees are concerned.

The statements of the persons interested shall then be recorded as to the measurements and as to their agreeing to the rates of compensation proposed for the various qualities of land, for trees, houses, standing crops, etc., and to the apportionment thereof. If a holding or a field is jointly owned, or is mortgaged, or held by occupancy tenants, the officer acquiring the land will also enquire as to the shares of the compensation to be paid to the several owners, to mortgagor and mortgagee, and to owner and tenant, respectively. He will also have to decide as to compensation to be paid to the superior landlord (if any). These points are important, and the officer should in no case fail to take them into consideration. Where compensation is payable on account of standing crops, the amount of compensation awarded should be the market-value of the crops less the amount of land revenue and cesses payable on the land, since under paragraph 69, the land revenue will be reduced from the harvest during which the land has been taken up.

33. In cases where the Government revenue has been alienated in favour of any one, the value of the loss of revenue to the assignee must be estimated.

In shared villages reductions in revenue due to the acquisition of land for the State should be made from the *khálsa* rent roll unless this course is impossible owing to the method of the division of the shares, or for other sufficient reason.

Where *jágir* or *muáfi* land taken up is insignificant in amount, and reduction cannot be made from the *khálsa* rent roll, compensation must be awarded in cash, in accordance with the directions given below. But when the amount of *jágir* or *muáfi* on the land taken up is more than Rs. 100 per annum, or when such amount is more than one-fifth of the total land revenue enjoyed by the assignee, and the reduction cannot be charged to the *khálsa* rent roll, the Local Government is willing to receive proposal through the Financial Commissioner for the grant of a pension or of a new assignment in lieu of the cash compensation otherwise payable for the

assignee's interest in the land. Such proposals should not be made as a matter of course, but only when clearly indicated by the circumstances of the case. When such proposals are not made the matter will be dealt with according to the rules for cash compensation.

34 In cases where cash compensation is awarded, the following rules shall be observed: If the assignment is for more than one life, or in perpetuity, the compensation is to be calculated at 20 years' purchase of the Government revenue assessable on the land. If the assignment be only for life the value is to be calculated (excluding months and days) according to the scale laid down by Government for buying out pensions by which a fixed graduated value* is given with reference to ages. The amount thus calculated is to be paid to the encumbrancer, and his right thus extinguished. Where *nazarána* is paid annually by the *jágirdár*, this is really a deduction from the revenue of the *jágír*. In such a case a proportionable amount of the *nazarána* should be remitted, and the amount of the compensation must be calculated after deducting the *nazarána* proportionable to the amount of the assignment extinguished. If the assignment be for the term of settlement, compensation must be calculated with reference to the number of years the settlement has yet to run, provided that in no case more than twenty years' purchase—the limit for perpetual grants—be allowed.

35. In framing his award, the acquiring officer will pay special attention to the directions given in sections 23 and 24 of the Land Acquisition Act. The chief matter for determination is the market value of the land at the date of the publication and the declaration relating thereto under section 6. The officer acquiring the land may consider the prices paid for land, if any, recently acquired under the Act in the same neighbourhood, or prices paid in private transactions and recorded in registered deeds or judicial proceedings, or the letting value of the land' and the amount of the Government revenue, if any. In the case of private transactions he will recollect that the recorded price may be misleading from the indebtedness of the vendor,

* Valuation of life annuity of one rupee per annum—

Years.	Rs.	A.	P.	Years.	Rs.	A.	P.
Under 10	13	0	0	45 to 49	9	8	0
10 to 19	12	8	0	50 to 54	9	0	0
20 to 24	12	0	0	55 to 59	8	0	0
25 to 29	11	8	0	60 to 64	7	0	0
30 to 34	11	0	0	65 to 69	6	0	0
35 to 39	10	8	0	70 or above	5	0	0
40 to 44	10	0	0				

or from over-statement in order to avoid pre-emption claims. It will always be open to him to consult respectable people who are disinterested. *See* Punjab Government No. 353, dated 18th June 1897.

In regard to house property it may be found convenient to consult the following authorities: I. L. R., 15 Bom., 279: I. L. R., 2 Cal., 103; 11 B. L. R., 236.

In all cases, however, when the point arises he will do well to take into view the third head in section 23 (1) of the Act. Compensation for damage in consequence of severance is a matter of importance and difficulty. In the case of railways or canals with crossings at considerable distances, the compensation may often be unavoidably high. If land upon acquisition will be severed from its source of irrigation, and the department acquiring the land does not undertake to grant irrigation facilities equal to those previously enjoyed, the difference between the market value of irrigable and non-irrigable land must be taken into consideration in estimating the value of the land so severed. The provisions of sub section (2) of section 49 of the Act should, however, be borne in mind in cases in which exorbitant claims are made on account of severance.

It should be noticed, however, that under the present Act no person can claim compensation unless some land has been taken in which he claims an interest or over which he has an easement. He cannot claim compensation on the ground that his land is injuriously affected by the acquisition, if no part of it is taken under the Act.

36. When all statements have been recorded, the acquiring officer shall draw up his award, which will state the total area of the various qualities of land taken up, the rate and total amount of compensation to be paid on account of the land of each quality, the total amount of compensation to be paid on account of crops, trees, houses, etc., the proportion of the compensation to be enjoyed by mortgagees and by occupancy tenants, and his decision on any objections that have been raised by persons interested. The extra 15 per cent. awarded under section 23 (2) on account of compulsory acquisition should not be included in the rates awarded per acre, but should be added on to the total compensation and separately shown. It should be noted that section 23 (2) provides for the grant of 15 per cent. compensation on the market value of the *land* acquired and not on the total award. *Land* as defined in section 3 (*a*) of the Act would include land, trees, and buildings. But 15 per cent. is not to be added to compensation awarded in consideration of any of the matters specified in clauses 2 to 6 section 23 (1). Nor is it to be added to the capitalised value of *jagir* revenue granted under paragraph 32.

Below the general award he shall have drawn up a statement in English showing the compensation awarded on account of each holding.

37. The award shall then be explained to the persons present, and those interested in each holding shall be informed of the amount of compensation to which they are entitled. Notice of the award shall also be sent to all persons interested in the land who are not present in Court. It will be noted that the Act requires *immediate* notice to be sent.

The acquiring officer shall, except in the circumstances described in paragraph 54, take possession of the land immediately after the announcement of the award and, if necessary, give notice to the departmental officer concerned.

38. Separate proceedings must be taken as to land acquired under separate notifications; and separate award should be drawn up on account of each village in which land is acquired.

39. In all cases an award of cash compensation must be made. It, however, not infrequently happens that either (*a*) the person, from whom the land is being acquired, asks that Government land no longer required for public purposes may be given to him in lieu of cash compensation, or (*b*) it would be convenient to award compensation in the form of land instead of cash. This latter case would occur chiefly when a new cut was being made on a canal, and the land under the old cut was no longer required. All land no longer required must, however, be disposed of in accordance with the provisions of paragraph 74 below. It follows, firstly, that no land to which any person has any claim under that paragraph can be awarded to other persons as compensation for land acquired from them; and secondly, that no departmental officer can, by private negotiation or otherwise, acquire land for a public purpose and give in exchange for it other land no longer required. All land not required must be handed over to the Deputy Commissioner. If it is proposed by any departmental officer to relinquish land and to acquire other land in the neighbourhood he must treat the two transactions as entirely separate. All he can do is to hand over the land to the Deputy Commissioner and represent to him that, if possible, the land should be given as compensation for the other land to be acquired. If the acquiring officer, after having satisfied himself that no person has any claim to the land under paragraph 74, proposes to award it as compensation, he will award cash compensation as usual, but will record in the award, and in the award Statement A [*vide* paragraph 45 (2)] a note to the effect that it is proposed to give land in lieu of cash. The question of the land to be awarded will then be dealt with in separate file. If the Local Government sanctions under section 31 (3) of the Act proposed award of land in lieu of cash, the award statement (Form A) must be

altered by the omission of the amount of cash compensation in lieu of which the land has been given, and the Examiner of Accounts or other audit officer with whom the acquiring officer is in account must be informed accordingly.

40. In cases in which compensation is granted in the shape of other land in exchange, or remission of revenue, as provided in section 31 (3) of the Act, and the land is acquired for Government purposes, no adjustment of the value of the land given in exchange will be required, unless it is separately purchased by Government. If, however, the land is acquired for a body financially independent of Government, the value of the Government land given in exchange and the capitalised value of the abatement of Land Revenue should be charged against advances of funds (49) made by that body.

41. No person should be compelled to take land as compensation in lieu of cash.

42. It is incumbent on the acquiring officer to remember that so far as Government is concerned his award is final, and care should be taken that Government is not compelled by any oversight to pay more than the market value of the land. A company also is under section 50 of the Act, bound by the Collector's award.

REFERENCE TO THE COURT.

59. When action is taken under section 19 of the Act the acquiring officer should be guided by the following consideration in deciding whether to make a separate reference on account of each holding included in the award, as to which an application has been filed under section 18, or to make a single reference covering several holdings. In all cases there must be a separate reference on account of each village. If the persons interested in a number of holdings in the same village object to the award on the same grounds, one reference may be made as to all the holdings; if, however, the persons interested in any holding object to the award on grounds which apply only to that holding, then a separate reference must be made as to that holding. References to the Court should, of course, be made only in the case of persons interested, who have objected to the award, assenting owners being settled with or without a reference to the Court. The sections of the Code of Civil Procedure on the object of misjoinder of causes of action and of parties should be consulted in this connection.

60. The officer should at once inform the departmental officer concerned of any reference to the Court made under section 19, and should forward to him a copy of the grounds on which the objection to the award is taken [section 18 (2)]. When a notice is served under section 20 (c), the acquiring officer should immediately forward a copy to the departmental officer.

61. The proceedings before the Court under Part III of the Act are of a regular judicial kind, and the provisions of the Civil Procedure Code and of the Indian Evidence Act are applicable. Acquiring officers must, therefore, understand that it is not enough to send up to the Court the files of the acquisition of land cases, but that they must arrange for Government being properly represented at the hearing before the Judge either by the departmental officer or by one of their own subordinates. Facts must be proved in a legal manner, and all evidence, whether oral or documentary, on which the case is to be decided, must be produced in Court. If the acquiring officer is not represented before the Court the case will be decided *ex-parte*, and Government will be prejudiced if it is found necessary to present an appeal.

REDUCTION OF LAND REVENUE.

66. Deputy Commissioners will by a date not later than 1st may of each year submit to Commissioners for transmission to the Financial Commissioner a statement in the prescribed form showing the amount of reduction of Land Revenue due on account of land acquired during the past official year :—

In case of land taken up for canals the Deputy Commissioner will send a copy of the above statement to the Divisional Canal Officer concerned.

67. The reduction of land revenue to be granted must be calculated according to the amount actually paid to Government as land revenue on the plots taken up, or if no specific amount is assessed on them, the settlement rate of the village for the particular class of land should be applied.

68. When land paying revenue to Government is taken up for a public purpose, the revenue demand will be reduced if the work is chargeable to Imperial or Provincial revenues ; but when the work is chargeable to District or Municipal Funds, the revenue demand will be payable by the District Board to Municipal Committee till next revision of settlement, but not thereafter.

69. If possession of land is taken after the rabi crop has been cut, and before the date on which the harvesting of the kharif crop usually begins, the reduction of revenue will have effect from the kharif harvest ; otherwise it will have effect from the kharif harvest ; otherwise it will have effect from the rabi harvest.

TEMPORARY OCCUPATION.

70. The temporary occupation of land requires no declaration in the Gazette, but it requires the sanction of Government if action is to be taken under Part VI of the Act. Application should be made to Government through the same channel as an application for the issue of a notification under section 6. The Deputy Commissioner will take action on the sanction of Government being communicated to him.

Only waste and arable land can under section 35 (1) be acquired for temporary occupation. Building sites cannot therefore be so taken up under the Act.

When land is temporarily taken up by private bargain and without recourse to the provisions of Part VI, the negotiations should be carried out and completed by the departmental officer. The Deputy Commissioner will give the departmental officer any information he may require as to rent, etc., but he will not himself conduct the negotiations.

The departmental officer should send the Deputy Commissioner a copy of the agreement come to with the owners and occupiers of the land.

71. For land tempoparily occupied, a yearly rent will ordinarily be paid. Such rent should be paid through the Deputy Commissioner, and not by the departmental officer direct, whether the land has been occupied under Part VI of the Act or by private agreement.

72. The owners and former occupants shall receive an extract from the field registers, describing precisely their tenure and the extent of the lands they will eventually be entitled to recover.

The temporary occupation will not interfere with the liability of the persons settled with to pay land revenue and no reduction of revenue will be sanctioned.

Extract from the Rules promulgated by the Government of Burma under Act I of 1894.

Enquiry into Measurements, Value and Claims, and Award by the Collector.

18. The Collector may in his discretion consider and dispose of the alternative proposal put forward by person whose land is to be acquired after consultation with the department or officer administering the fund or company in whose behalf the land is to be acquired.

19. The Collector may, for the purpose of valuation, call for reports from any subordinate officer; but the final valuation on which his tender of compensation is based must in every case be made by the Collector himself.

Enquiry by Collector is no longer summary.

20. The Collector's enquiry is no longer to be "summary." His award must be under the three heads (i), (ii), and (iii) specified in section 11, details of the compensation under (ii) being given (if necessary) as required by section 23 (*1*) and (*2*) of the Act. The Collector is bound to safeguard the interests of all persons interested, whether they appear before him or not. He is further, under section 12 (*2*), required to give persons not present immediate notice of his award.

21. In determining the amount of compensation, the Collector has to give special consideration to the six points set forth in section 23, of which the most important is the market-value of the land, including everything attached to the land. The Market-value is the ascertained value *at the date of publication of the declaration* required by section 6, but in considering the damage sustained by the persons interested under the second, third and fourth heads, the date at which the damage is to be estimated is the date of the Collector's taking possession of the land.

22. Lands which bear produce may be broadly classed under—

(i) paddy or other field crop lands ;

(ii) garden or fruit tree lands.

The market-value will be most correctly deduced from the current market-values of similar lands in the vicinity or in the same circle. Care must be taken that the lands with which comparison is made are really similar to the land which is to be acquired. The fact that the same rate of revenue assessment is paid on different lands does not necessarily show that these lands are of the same market-value. The points in respect of which similarity should be sought are—

(i) natural fertility and kind of produce raised ;
(ii) advantages of situation ;
(iii) distance from market.

In settled tracts the survey maps, the Settlement Officer's classification of the soil, and the annual register of transfers of land should be consulted.

23. The following scale of compensation is laid down as a guide in default of evidence of market value from sales elsewhere.

LOWER BURMA.

(*a*) Landholder or grantee ...	Six times the annual revenue on the land. If the land be not assessed to revenue, six times the annual revenue which would be payable at rates paid on similar land.
(*b*) Non-landholder ...	A sum equal to one year's revenue on the land. If the land be fallow in a registered holding, the same rates of compensation as if the land were under cultivation.
(*c*) Trees	If they are fruit trees, six times the annual value of the fruit, less the revenue payable on them ; if they are not fruit trees, the value of the timber.
(*d*) Land within village-sites enclosed and part of a homestead.	A sum equal to the revenue on the area at the highest garden rate in the township.
(*e*) Land used for non-agricultural purposes, *e.g.*, brick-field, salt factory—	
(i) If landholder's rights have been acquired.	A sum equal to six times the highest land revenue rate in the township on the area.
(ii) If landholder's rights have not been acquired.	A sum equal to one year's revenue at the highest land revenue rate in the township.
(*f*) Land in towns held under lease.	Six times the annual rent.
(*g*) Land in towns under squatter tenure.	A sum equal to one year's rent.

UPPER BURMA.

Cultivated land.

(*a*) If State land under lease from year to year and the occupier is ejected without notice under Rule 30, Chapter V of the Rules, under the Upper Burma Land and Revenue Regulation.	(*a*) Compensation for disturbance not exceeding one year's rent. (*b*) Compensation for improvements.
(*b*) If State land under lease for a period of years and the occupier is ejected without notice under Rule 30, Chapter V of the Rules under the Upper Burma Land and Revenue Regulation.	(*a*) A sum not exceeding one year's rent based on average of rents of past three years. (*b*) Compensation for improvements.
(*c*) If non-State land (*bobabaing* and other).	A sum not exceeding six year's purchase of the average annual rent of similar State land of same area in the vicinity, (or if there be no such Stae land) a sum not exceeding double of the value of the annual gross outturn, based on the average of the past three years.

Uncultivated land devoted to building or other purposes.

(*d*) If non-State land (*bobabaing* and other) in villages.	Same compensation as for similar cultivated land [*see* (*c*)], comparison being made with the rent of State land or gross produce of non-State land, as the case may be, in the vicinity.
(*e*) If non-State land (*bobabaing* and other) in towns.	A sum not exceeding six years' purchase of the rental value of the land or of similarly situated land in the vicinity and of the same area.

(*f*) Private fruit-bearing trees...	A sum not exceeding the value of six years' annual gross produce of fruit.
(*g*) Private non-fruit trees ...	Market value of the timber.
(*h*) Saplings	Actual cost incurred in planting and rearing.

24. If there is a crop on the ground, the crop must be valued separately. If the crop is not sufficiently advanced to admit of an estimate of actual outturn, the valuation must be made upon an estimate of the habitual outturn of the land. In settled tracts the Settlement Officer's statistics should be consulted.

25. The tender to be made by the Collector must, of course, include the value of any buildings.

In estimating the value of a house, consideration should be given to the actual cost of erecting a similar building less a certain percentage, generally from 5 to 15 per cent. per annum (according to material and description) and deterioration.

26. If any house, building, or tree standing on the land to be acquired should not be required by Government, the owner may be allowed the option of removing it within a reasonable period to be fixed by the Collector. The Collector shall make his award at the end of this period, and, if the building or tree has been removed, shall leave it out of consideration in awarding compensation. If abandoned pagodas or *kyaungs* are standing on any land acquired under the Act, the Collector has discretion to allow neighbouring villagers to remove the materials within a reasonable time.

27. Similarly, when land is available which may be given in lieu of the land under acquisition, an option of receiving it in exchange for the whole or any portion of the land of which he is being expropriated may [*vide* section (*3*)] be allowed to the owner on his consenting to allow a sum corresponding to its value to be deducted from the compensation which would otherwise be awarded to him. The equivalent of the compensation due to such person may also be offered in the form of remission of land revenue for the current year on other land held by him under the same title. The sanction of the Chief Commissioner is necessary to arrangements of this kind.

28. When compensation has to be awarded for *quasi*-public buildings, such as *zayats*, an offer should be made to remove and rebuild them in a suitable position at the expense of Government, unless the cost of removal and rebuilding would exceed the full value of the buildings ; provided that all claim to the compensation awarded on account of such buildings is surrenderd by the parties entitled to receive it.

29. Section 23, sub-section (2) of the Act, lays down that 15 per cent. on the market value of the land is to be given as additional compensation in consideration of the compulsory nature of the acquisition. It will therefore be necessary for the Collector to record separately his finding under each head of section 23 of the Act in order that the sum on which the additional compensation of the 15 per cent. is to be computed may be known.

30. When tendering the amount of compensation which in his opinion should be allowed for the land, the Collector should explain carefully to the parties before him the provisions of sections 23 and 24 and the method which he has followed in determining the amount of compensation and in apportioning it.

31. An application for a reference to the Court must be a *written* application by a person interested in the land, and the application must state the grounds on which objection is taken to the Collector's award. If the application be not made within the period set out in the proviso to section 18, the Collector must decline to receive it. If the reference is accepted, the Collector must be careful in forwarding it to the Court, to furnish all the particulars required by section 19.

32. When the Collector refers to the Court under section 31 any dispute as to the apportionment of an accepted amount of compensation, he shall serve notices on the parties interested, stating that he has made the reference required by section 31.

Taking Possession.

33. Section 16 of the Act empowers Collector to take possession of the land as soon as an award has been made. Possession shall not be taken by any person other than the Collector without written authority of the Collector. Sub-section (2) of section 17 gives the Collector powers (which the Act of 1870 did not give) to take immediate possession [*i.e.*, immediately after publication of the notice under section 9 (*1*)] of any land required in cases of emergency for a Railway administration. The previous sanction of the Chief Commissioner is necessary to such taking of possession.

34. When crops are standing on the land the Collector should not, except in cases of urgency, take possession until the crops have been cut.

Payment of Compensation.

35. On making an award under section 11, the Collector shall tender the amount to the persons entitled to receive it. Should any interested person be absent and have no authorised agent at the Collector's office, the Collector shall serve a notice upon him calling upon him to attend in person or by agent within 15 days of his receipt of the notice.

36. Should such person neglect to appear within the time specified, or refuse to receive the amount tendered, the Collector shall, on being satisfied of the due service of the notice, deposit the amount in the Court to which a reference under section 18 would be made, and shall obtain a receipt for the deposit which shall be filed in his proceedings [*vide* Directions 45, 46, 53].

Abatement of Revenue.

37. In every case of acquisition of land under the Act, the Deputy Commissioner shall cause to be deducted from the area of each holding affected, the area acquired and shall make a corresponding deduction in the revenue (if any) payable on such land in the revenue roll of the year concerned.

Withdrawal.

38. Under section 48 of the Act, the Local Government may (except in the case described in the proviso to section 36) withdraw from the acquisition of land which it has proposed to acquire if possession of the land has not been taken.

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